HOUSE OF ASSEMBLY.

Wednesday, September 2, 1959.

The SPEAKER (Hon. B. H. Teusner) took the Chair at 2 p.m. and read prayers.

NO-CONFIDENCE MOTION: STUART ROYAL COMMISSION.

Mr. O'HALLORAN (Leader of the Opposition)—I move—

That the Standing Orders be suspended to enable me to move the following motion without notice:—

That, in view of public disquiet concerning the Royal Commission and the flagrant denial by the Government yesterday of the rights of Parliament to discuss the issue, the Government does not possess the confidence of this House.

The SPEAKER—Is the motion seconded?

Mr. FRANK WALSH (Edwardstown)—Yes.

Motion carried.

Mr. O'HALLORAN (Leader of the Opposition)—I move—

That, in view of public disquiet concerning the Royal Commission and the flagrant denial by the Government yesterday of the rights of Parliament to discuss the issue, the Government does not possess the confidence of this House.

I say at the outset that the Opposition has given very mature consideration to this issue before taking the extreme step of moving a motion of censure on the Government. I point out that the seriousness of the position so far as we are concerned is further demonstrated by the fact that the member for West Torrens, Mr. Fred Walsh, who was attending a very important industrial conference in Melbourne, has flown back today in order to be present at this debate. The issue is a simple one, although, of course, it leaves room for differences of opinion, but I hope to be able to dispel any difference of opinion as to whether the motion should be carried. It is an issue between Parliament and the Executive. That is an issue which occasionally does arise in British Parliaments and an issue which can only be finally resolved by a motion such as this.

It is true, and this is accepted by the Opposition, that the Executive has great responsibilities. The Premier told us that on another occasion not long ago, but I point out that although the Executive has great Constitutional responsibilities, in a British democracy such as ours, the Parliament also has great responsibilities. It is the duty of Parliament to see that actions of the Executive do not impinge on the public conscience, and that is why, in this motion, I have used the term "disquiet," because finally the Parliament is responsible to the people and if a substantial body of the people are suffering from thoughts which arouse disquiet in their minds about a certain matter, then it becomes the duty of the Parliament to endeavour, so far as it is able, to see that the matter is ventilated.

I do not intend to touch in any way on the proceedings and the evidence and what has transpired before the present Royal Commission, but I do desire to quote some eminent authorities to show that grave disquiet exists, not only in Australia, but overseas on this matter. In the *News* of August 27, under the sub-heading "Top British Legal Views on Stuart Case," the following appears:—

Some of the most eminent legal and public men in England commented today on the composition and difficulties of the Stuart Royal Commission.

The article later states:—

They included a former Prime Minister, the celebrated Lord Birkett, Britain's leading professor of law, several Queen's Counsel and a representative of the Law Society.

Typical of their comment, in all cases carefully and moderately expressed, was that of Sir David Hughes Parry, who is director of advanced legal studies and professor of English law at the University of London.

Sir David said: "When I saw that the commission was going to include a judge who sat on the Court of Appeal and the judge who tried the case, I thought it was a most peculiar and embarrassing situation. I think that still."

Lord Birkett, until recently Lord Justice of Appeal, speaking at his Buckinghamshire home: "I would not wish to enter any Australian controversy but I would say this—that if you are going to have a Royal Commission, you should so constitute it that no possibility of criticism can arise. And while nothing naturally can or should be said against the members involved, the appointment of the Stuart Commission didn't give the impression of complete detachment which is so necessary and desirable."

Lord Attlee, former Prime Minister, speaking at his home in Buckinghamshire: "I cannot remember a Royal Commission in this country being criticised on similar grounds. For a precedent one would need to go back to the Parnell Commission of 1888."

Mr. Jo Grimond, leader of the British Liberal Party, speaking at his home in Orkney: "I haven't followed the Stuart case in detail, and I don't presume to criticise what an Australian Government does. It may have its reasons and difficulties. Nevertheless in this country, it would be most unusual to place on a commission the judge who had already heard a case. It would require some very special reason. I should say that the Crown's prerogative should —and must—be considered at this stage."

Mr. R. T. Paget, Q.C., M.P., also endorsed the remarks of the previous learned gentlemen that I have mentioned.

We then come to some Australian expressions of opinion, of which there are so many I

do not desire to weary the House by quoting them as they are all in the same strain. However, I think it is wise that I should mention the New South Wales Minister of Health, Mr. W. F. Sheahan, who is a Q.C. and a former Attorney-General. He said:—

Speaking as a barrister, I would say that the stand taken by Mr. Shand was correct. It was courageous and in accordance with the best traditions of the legal profession.

The report continues:—

Speaking in the New South Wales Legislative Assembly, the Health Minister, Mr. Sheahan, who is a Q.C., said the people of New South Wales had had their emotions stirred and their interest excited to a high pitch by what was occurring in South Australia. They were anxious and bewildered by aspects of the case, and asked: "Could it happen in New South Wales?" Mr. Sheahan was supporting another Q.C., Mr. Vernon Treatt (Liberal, Woollahra) who criticized legal procedures in the Stuart case.

I understand that Mr. Treatt is an illustrious gentleman who until recently was the Leader of the Liberal Party in New South Wales. The report continues:—

Mr. Treatt sought an assurance from the State Government that an accused person in New South Wales could not be left, even momentarily, without defence counsel. He said South Australia continued to use the old system of assigning counsel to a poor prisoner without defence. In New South Wales, the State employed a Public Defender to look after the interests of poor prisoners.

The only other illustrious jurist I desire to quote is Sir John Latham, former Chief Justice of the Australian High Court. In a letter to the Premier he referred to an interview which he had with a Professor of the Melbourne University, and made this suggestion:—

I suggest to you that difficulties might be largely removed if the Royal Commission was now directed to report whether, in view of evidence that was not tendered at the trial, but which is now available, steps should be taken to set aside the conviction of Stuart and to provide for a new trial of Stuart by judge and jury.

I think I have shown that there is disquiet in high legal circles about aspects of this matter, and there is also great public disquiet. Organizations large and small, numerically, though not in importance, have carried resolutions and forwarded them to me urging that something should be done to correct what they believe to be a mistake. Amongst them is the Australian Council of Trade Unions, one of the largest bodies, so far as membership is concerned, in Australia. Many other organizations and individuals have shown conclusively that there is public disquiet on this matter.

Yesterday, on behalf of the Opposition I sought the suspension of Standing Orders and the practices of the House in order to discuss this matter, and I was prevented by the majority of members who followed the lead of the Government in voting against my motion. Parliament was therefore denied the opportunity of discussing the many important facets which it could have discussed had my motion for the suspension of Standing Orders and practices been agreed to. I cannot go as far today as I would have been able to go had the suspension motion moved yesterday been carried, and, of course, the responsibility for that must rest on the shoulders of the Premier because he gave the lead to members on his side who constituted the majority which defeated my motion.

This brings me again to the right of Parliament to discuss matters. All I desired yesterday was the right of Parliament to discuss the matter. Certainly it would have been a less fettered right than we have today, because we respect the provisions of the Standing Orders and the practices of the Parliament that we may not discuss matters that are *sub judice*, but I think we can discuss what we think are errors on the part of the Executive in this respect. I return to the suggestion of Mr. Treatt, that it would not be possible in New South Wales for an accused person to be left without defence counsel, even momentarily. In this case in South Australia the unfortunate person most concerned is left without counsel, and as far as we can see is going to be left without counsel until the inquiry is concluded.

Mr. Shannon—Very unhappily, but I don't think the Government can be blamed for that.

Mr. O'HALLORAN—I do not know. Surely the Government could have taken some steps to avoid that, but apparently it has taken no steps. That is one of the points I think Parliament has a right to censure the Government on, because the first cardinal point of British law, as I understand it, is that an accused person must have his guilt proved beyond doubt before he is punished for a crime. I know the Premier will probably say that this matter has been tested before the various courts, in the original trial, in the Full Court, in the High Court, and again before the Privy Council, but the point is that following those various trials many new matters have arisen which perhaps if they had been before any of these courts would have completely changed the verdict of the courts.

This is one of the things on which the Opposition feels Parliament has a responsibility to challenge the Executive in not having taken steps to have rectified what we believe to be grave errors in this regard.

Mr. FRANK WALSH (Edwardstown)—I formally second the motion.

Mr. DUNSTAN (Norwood)—Yesterday we had the spectacle in this House that, even despite the electoral situation in this State, one would not have expected from a Government which considers, or holds out to the people that it considers, that it believes in responsible government. We in this State have a judiciary which is appointed under the provisions of the Constitution. The judiciary has to be independent. Matters which are *sub judice,* that is, under the judge, should not be discussed in Parliament. That has always been accepted by members on this side of the House and has never been contested; but when the whole process of litigation has been gone through and the Executive, in the exercise of its prerogative, decides that a Commission of Inquiry shall be held, that is no longer a matter before the judges as an independent judiciary. The Commission of Inquiry is a Commission appointed by an Executive Government, for which the Executive Government is responsible, and it is responsible also to this House. Therefore, if there is public disquiet about the proceedings of commissioners so appointed, or about the appointment itself, or about the terms of reference of the inquiry, then the Executive should be accountable to this House, and this House should have the opportunity to discuss the matter and advise the Executive. That right, which was sought by members here yesterday, was denied, and denied by the sheer weight of members of the Government Party voting with the Ministry. I think that is completely contrary to the traditions of British Parliaments. The tradition of British Parliaments is that a responsible Government must be responsible to the elected representatives of the people, and those elected representatives of the people should have the right to express in this House the views they represent.

Mr. Lawn—You have to except South Australia from those traditions.

Mr. DUNSTAN—I regret that I have to except South Australia from the traditions, but we should not have to do so, and that is why this motion has been moved today. If the Government is going to depart from those traditions it should not possess the confidence of members of this House.

I do not propose to pass upon the matters that have taken place before the Royal Commission itself. The suggestion was made in the House yesterday that members on this side wanted to try this matter in this House. Sir, that is completely false. Members on this side of the House do not believe that this matter should be tried here, or could be tried here. We do not want that ever to occur; but we are responsible to the people whom we represent here for the proper carrying on of justice in this community, and for seeing that the actions of the Executive are in accordance with the traditions of British judicial practice.

Let me now turn to the matter that has caused public disquiet in this issue. Some of the matters to which I shall advert I did not know at the time the Commission was appointed. Had I done so I should have had something to say about it at the time. Knowing what I know now I conceive it my duty to speak. Let me say at once that in speaking of the commissioners in this case I think it proper that I should say that in my experience before every one of them they have been completely fair, completely sound, and courteous to a degree. From my personal experiences, I have no complaint whatever about the judges who accepted the commission. I believe that every member of the Bar in this State would hold them in high regard and in warm affection. I do not believe for one moment that any one of them would consciously do something that he conceived to be unfair. I believe that they would do what they conceived to be their duty, and as I have no doubt that they will do what they conceive to be their duty so shall I do what I conceive to be mine.

It is desirable, as Lord Birkett said, that a commission of inquiry should give a complete appearance of impartiality, of detachment from the matters into which they are inquiring. In these circumstances it is most undesirable that any commissioner should go to an inquiry having expressed an opinion already about matters upon which he is to inquire. If he has done so, then he ought not—I say with respect—to accept the commission. It is perfectly true, and no lawyer would ever deny it, that where a matter of new evidence is raised it is not only perfectly proper but common practice for the judges who have previously sat upon the case to be asked to

consider the question of whether the new evidence would possibly have disturbed the verdict of the jury had it been before the jury at the time. That is perfectly proper. They would never have had to pass upon that evidence. They would have expressed no opinion on it. They would have been completely detached and that is perfectly proper procedure; but where the judges are appointed to a Commission of Inquiry and asked to pass upon matters which are not mere matters of new evidence but matters upon which they have already sat, it is a completely different matter. No precedent can be shown where that has happened.

It is perfectly true that a trial judge does not decide matters of fact. He is there to preside over the trial and to draw the attention of the members of the jury to the salient points which are for them to decide on matters of fact. It is also the case that the trial judge may invite the jury, quite properly and fairly, to consider certain views and he may properly express his views on the weight of the evidence to the jury. To a certain extent, though perfectly properly and fairly, that is what Mr. Justice Reed did in the trial in the first instance. With great respect to him, I do not think it fair to him to have been asked to sit on the Commission to pass on matters on which he had already sat as the trial judge, and I think, again with great respect to him, that it was unwise of him to accept.

There is a further matter and this is a matter of which I was ignorant when the Commission was appointed. When the case came before the Full Court of Criminal Appeal in South Australia and submissions were made by counsel upon the terms of appeal, the Chief Justice expressed opinions most forcibly on the other matters that are now part of the terms of reference upon which he has to pass. Let me turn to the transcript of the argument before the Full Court; the following appears on page 39. Mr. Justice Mayo said to Mr. O'Sullivan, who was counsel for the appellant, "How would you suggest the confession was compiled?" and Mr. O'Sullivan answered:—

> By the police asking questions, getting answers, disregarding some, getting him back on to the track, more questions, more answers, stopping him as he rambled off on some other subject. They asked him a lot of questions and after the assaults he said "Yes" to anything because he thought he was going to be killed.

The Chief Justice then said "That is utter rubbish!" The Premier, after consultation with the Chief Justice, assured the House that the matter of the confession would be dealt with by the Commission, but His Honor has already, when he was acting as a judge, not as a commissioner, passed an opinion on this matter so forcefully that you could not have gone further, and he is now being asked to review that opinion that he had already expressed so forcefully. The transcript continued:—

> The Chief Justice—Suppose we think he was guided along his course?
>
> Mr. O'Sullivan—If you think that, you must hold that Jones was committing perjury when he says "Nothing was done."

Jones had been questioned very closely upon this matter and had insisted before the court that there was no alteration, that the words that were used in the confession were the words of the accused, and that no other words were used. The Chief Justice replied to Mr. O'Sullivan:—

> You throw these allegations about with reckless abandon. Coming from a member of the Bar—one ought to be careful about accusing people of perjury. Even quite capable people make mistakes, even quite capable people under stress of examination will sometimes say more or say less than they intend to say.

His Honor has carefully said that his opinion was that any discrepancies in the police evidence were merely matters of mistake and not of intention, and not something that should be passed upon. That, again, is something that he is being asked to pass upon as a commissioner. With great respect to His Honor, I do not think he ought to be asked to do it and I do not think he ought to accept the duty of doing it. If that duty is accepted by the commissioners who have now been appointed, where do we get to? We get to the position where members of the judiciary, of the type and character I have outlined, place themselves in the position where, as commissioners, they are subject to criticism; as judges they would not be, but as commissioners they would be subject to public criticism. They put themselves in the position of having the public criticize them if it chooses to do so, and they ought not to be in that position. The judiciary of this State ought to be in a position where their actions cannot be called in question other than through judicial process and, therefore, both for the protection of the people upon whom they have to pass and for the protection of themselves and the offices that they hold, they should be relieved of the most unpleasant duty which has now, I believe unfairly, been placed upon them.

I hope that all of us in this House have respect for our judicial institutions. I would not be a member of the Bar did I not have respect for our judicial institutions; I have, and I have respect for these judges themselves as individual office holders within those institutions, but I do not want to see the situation further develop that has already developed, where allegations are made concerning their attitude to the matters of inquiry—allegations which most unfortunately, because of what has gone before, take on some colour in the form of criticism made by the most distinguished legal authorities. Lord Birkett—and I agree with every word he said—is one of the most distinguished judges Britain has ever known. No one will contest that statement, and I believe the statement he has made concerning this Commission is perfectly fair and perfectly just, and represents the situation that ought to exercise the mind of every member of this House.

In these circumstances, I believe that we ought to be able to go further, that we ought to be able to discuss the final matter that has caused public disquiet in this issue, the matter that has been passed upon recently before the Commission and which I am not allowed to talk upon today. I have read of that incident—I cannot say what it was—but I am most distressed. I have read the transcript in detail because I believe anyone talking about this matter should not rely upon newspaper reports, but should look at what took place in the official record. That is what I have sought to do in trying to satisfy my mind as a member of this House upon what the proper course should be. Having had a look at that record, I can only say that I am extremely distressed at what took place.

I do not believe the Commission should continue under these circumstances. I do not know what right Mr. Brazel claims to speak for the Bar of South Australia; I was not aware that he had any right. I do not claim that right, but I do know that very many members of the legal profession have approached me and have expressed disquiet similar to that which I have expressed before this House today. It is very distressing that that should be the case but, if it is the case, let us stop it now, and the only way we can stop it now is to have the Government, fully responsible to this House, in a full discussion before this House. That is what the Government has refused and because of that I ask the House to carry a motion of no confidence in our Executive Government today.

Mr. LAWN (Adelaide)—I welcome this opportunity the Government has provided us with this afternoon. On August 4, speaking on the Address in Reply, I referred to the important matter that is now under discussion. I condemned Executive Council for what it did then, but said it was just peculiar to South Australia, like a number of things this Government does, such as passing electoral laws and other things. This Government does not accept precedents or the traditions of the Parliaments of the British Commonwealth of Nations, as the honourable member for Norwood pointed out. The Premier has tried to put up all sorts of excuses. He is not worried much about trying to justify the actions of this Government, because he is sitting pretty on a gerrymandered electorate, feeling sure, on this issue as on others in the past, that he can do as he likes and just ignore public opinion. He goes his own way and appoints Royal Commissions in his own fashion quite contrary to the traditions of the British Commonwealth of Nations. Without going over the ground covered this afternoon by the Leader of the Parliamentary Labor Party, who quoted a number of eminent legal men, I deny the Premier's statement yesterday that all this public disquiet is brought about by the actions of the newspapers. Why, the press of South Australia is as much in the corner of the Playford Government as of the Liberal Party in every other State of the Commonwealth!

Mr. O'Halloran—More so, I would think.

Mr. LAWN—I should think even more so because, in some of the eastern States, statements are made in the press from time to time condemning the Liberal Party Government, but that never happens in South Australia.

Mr. Jenkins—They are good judges.

Mr. O'Halloran—The eastern people are.

Mr. LAWN—That is more than I can say for members opposite. There are no good judges there, and no Parliamentary representatives of the people either.

The SPEAKER—Order! The honourable member must not reflect on other members of this House.

Mr. LAWN—I am pleased that you accept that statement as a reflection on other members, Mr. Speaker. When speaking on the Address in Reply on August 4 I criticised the action

of Executive Council in appointing this Commission. I am not concerned about the evidence that has been given before the Commission; I agree with the member for Norwood that one is not qualified to speak on these matters unless one is properly conversant with what happened. As a matter of fact, what happens before the courts is a matter for the courts, and it is not for me to come here and, from what I have read in the newspaper, say that the court is right or wrong or that the jury is right or wrong. I want to make my attitude on this matter quite clear because certain members on the other side of the House have the habit of misrepresenting statements made by members on this side. In respect of what happened at Ceduna I would say that hanging is not severe enough punishment for the person who committed that crime.

Mr. Hambour—What will you do with the "death penalty" Bill?

Mr. LAWN—I am opposed to hanging, but I say that it is not enough, as hanging the person who committed that crime would be too good for him. I am not saying who is guilty or discussing the merits of the case. I come now to what happened after the Privy Council dealt with this matter. It was then suggested that because of fresh evidence a Royal Commission should be appointed. Has a similarly constituted commission been appointed in any other Australian State? No! In no other part of the British Commonwealth of Nations, as the member for Norwood said and as we have read in the press in recent weeks, and in no other State—Queensland, Victoria and New South Wales—would a similar Royal Commission be appointed comprising judges who had participated in a previous trial. It could not happen anywhere but in South Australia. The only place it can happen is here because the dictator of this State and his supporters know that because of this electoral gerrymander they can do what they like and ignore the Opposition and those members of the public it represents. They believe that when the elections come around again they can get back because they have the electorates stacked their way with two members from the country to every one from the city. Parliamentary elections in this State are a farce! There is not much difference between South Australia and Russia. The Premier counts his vote his way, but in Russia they vote on coloured pieces of paper. If the Premier copied the Russian system we would vote red for the Communist Party, white—for purity—for the Labor Party, and yellow for the Liberal Party. The member for Gawler, Mr. Clark, suggested we should play our interstate football matches against Victoria under the Playford rules because then we would never lose. The Party on whose behalf I speak polled 48,000 votes more than the Government in March. The member for Light can't deny that. Yet, we come here with 17 members against the Government's 20.

Mr. Bockelberg—What has that to do with this?

Mr. LAWN—The member for Eyre could not understand, but the public does. It knows that it is the result of the Playford Government's gerrymandered electorates introduced by Sir Richard Butler, who, at the time said, "This will keep Labor out for 20 years." The Executive Council has appointed a peculiar Royal Commission. I have used the expression "peculiar," as have eminent legal men. "Peculiar" means "different from anything else"; that is a dictionary meaning. Our Executive Council has appointed a Royal Commission in a manner different from what any other Government in the world would have done: it has appointed to the Commission two judges who have been associated with the case—the trial judge and an appeal judge. Quite apart from the partiality or impartiality of the Royal Commission, I refer to what the Chairman of the Royal Commission said when Mr. Shand made his statement that has become known as "the walk-out statement."

The SPEAKER—Order! I cannot allow discussion or debate in the House on anything that has taken place before the Royal Commission or matters that have been referred to the Royal Commission for its consideration.

Mr. LAWN—I am not discussing the matters referred to the Commission, but on Mr. Shand's attitude in walking out—

The SPEAKER—I understood the member was going to quote something said at the hearing of the Commission. I will not allow here any statements or debate in connection with what has taken place at the hearing before the Royal Commission.

Mr. LAWN—All I want to do is to quote—so that I cannot be charged with misrepresentation—a reply by the Chairman of the Commission to Mr. Shand when he made his protest before walking out.

The SPEAKER—Order! That matter is out of order.

Mr. LAWN—All right, I accept that. But I want to say that apart from the question of partiality or impartiality, one principle that

guides a Government in the appointment of a Commission is that it won't take three judges from its State and put them on a Royal Commission, because whilst they are sitting on a Royal Commission all the court work would bank up. Members don't have to accept my authority for that statement: ask Sir Mellis Napier. He has said that, while they are sitting on that Commission, all their court work is banking up.

The SPEAKER—Order! I have just informed the honourable member—

Mr. LAWN—I don't want to say anything more about it.

The SPEAKER—Order! I remind the honourable member that he is not to refer to any statement made before the Royal Commission or by any members of the Royal Commission.

Mr. STOTT—On a point of order on the ruling you have just given to the member for Adelaide, Mr. Speaker, that he is not allowed to discuss anything said by the Commission, the member for Norwood, whilst speaking, quoted extracts of the transcript, but he was not ruled out of order.

The SPEAKER—Order! The honourable member did not quote anything from any evidence that was given before the Royal Commission.

Mr. LAWN—I am satisfied on that point. I have made it clear that, apart from the question of partiality or impartiality, our Executive should see that the court work is not disrupted by taking three judges from our courts. The proper and usual procedure is to ask other States to make judges available. On August 4 I said I wanted that practice followed—and it should have been—and that I would like the Government to ask the Commonwealth Government to release Judge Kriewaldt of the Northern Territory, who has a knowledge of the aborigines and who would have been the best choice as Chairman of the Commission.

The attitude of this Government is rather like the attitude of an overbearing mother who says, "Mother knows best what is good for you; hold your nose and swallow." That is the Government's attitude irrespective of whether it is a matter of appointing a Royal Commission or of our electoral laws. That is the type of Government we have. When it comes to long service leave this State has to be different from every other State and every other country in the world. Elsewhere, long service leave is granted on the basis of 10 to 13 weeks' leave after a qualifying period of 10 to 20 years, but here we get only one additional week's pay after seven years' service. Before concluding, I want to refer to statements that have appeared in the press—statements that do not emanate from the South Australian press. Yesterday the Premier tried to justify the Government's attitude in this House in refusing to let the Opposition speak on behalf of the people it represents on the grounds that the present disquiet in the public mind was brought about by certain newspapers here. I think we can all guess what he had in mind. I should like to refer to what is happening outside the State of South Australia, quite apart from the opinions of the eminent legal men quoted by the Leader. In the *News* of Monday, August 24 appeared this statement:—

A group of Sydney barristers, including two Q.Cs. issued a statement today which attacks statements made by two judges on the Stuart Royal Commission. A number of major Australian newspapers today carried editorials on the Stuart case questioning the composition of the commission.

It did not even refer to one Adelaide newspaper. The article continues:—

The Sydney barristers' statement read:—"Mr. Shand has taken the only possible course. By remaining in the commission he would only have given sanction to a proceeding which he believed was being conducted in a completely partial and unfair manner. It was contrary to the ordinary considerations of natural justice that two members of the commission should be judges involved in earlier proceedings. One had been responsible for the trial. The other had presided on the appeal to the Full Court and had expressed strong views about the attack on police evidence.

That is a condemnation of the action of the Executive Council in this State, and that is why I support the motion this afternoon. In the *News* of September 1 appears a statement as follows:—

Lawyers hit at three aspects. Sydney, today: Aspects of the Stuart Royal Commission have been criticized by three Sydney barristers.

That is an instance of public disquiet, not only in South Australia but elsewhere, and not emanating from any newspaper in Adelaide. The three persons I have referred to were Mr. Turner, Liberal M.H.R. for Bradfield; Miss Betty Archdale, headmistress of Abbotsleigh school, and Mr. Richard Windeyer, Q.C. Mr. Windeyer is a man who has been appointed to appear on behalf of the Commonwealth Government before other Royal Commissions. In the same newspaper the following article also appears:—

Melbourne, today. The Stuart case achieved the near impossible at the A.C.T.U. congress

yesterday—a unanimous vote. The first surprise came when the president, Mr. Monk, announced that two unions had asked for a debate on the Stuart case—the Building Workers Industrial Union and the Federated Clerks Union. Politically these two organizations are as the poles apart. Seldom before—if ever—have they been known to see eye to eye on any issue. The Building Workers Industrial Union is suspect as being under Communist influence. The F.I.A. is away to the right and, particularly in Victoria, is largely influenced by industrial group supporters. When the vote was taken on the interstate executive's recommendation that the Royal Commission should be reconstituted there was a thunderous "aye." Silence greeted Mr. Monk's call for "those against."

Mr. Speaker, disquiet unquestionably exists in the public mind today about the action of the Executive Council in appointing this Royal Commission. The statement I have just read refers to a decision of the Australian Council of Trade Unions Congress sitting in Melbourne today and representing the entire trade union movement of Australia. Within the movement are unions with different views, not only industrially but politically, and I stress that the two unions that asked the congress to discuss this matter are as wide apart politically as the poles, and that when the vote was taken there was a unanimous vote condemning, in effect, the action of the Executive Council of South Australia and asking, as we are asking, for the reconstitution of this Commission.

In my own electorate, not only in the past few weeks but only last night and this morning, I have received numerous telephone calls about this matter and about the refusal of the Government yesterday to grant the House an opportunity of discussing this matter. When going around a portion of my electorate this morning I met people who said that the Commission appointed by the Executive Council was political dynamite for the Government but, unfortunately, I was unable to agree, and I said, "In any other State, yes, but not in South Australia; this Government can get away with murder." We are known as the hanging State. The Government can do what it likes, feeling sure that when the next general election comes about it can safely rely on the gerrymander in this State. I support the motion wholeheartedly, and I hope that when the vote is taken the Government members will do the right thing and vote as their conscience dictates. They will not do so, because I know they have been told by their master what to do; they have been told to refrain from speaking on the motion and to leave it to the master who will do their talking for them, and then they will vote as they are told.

Mr. FRANK WALSH (Edwardstown)—I support the motion. From the outset it was my desire to assist the Leader of the Opposition in this debate, in view of the importance of the matters involved. I believe that we can rightly claim that we as a Parliament, as a result of proceedings in this House yesterday, were denied an opportunity to discuss certain matters that have created uneasiness in the minds of the public. A dispute exists between this Parliament and the Executive Council, and the Opposition rightly claims that under the Constitution it should have been permitted to at least bring before the notice of this Parliament matters that seriously affect this issue and which are causing uneasiness in the public mind.

It is a constitutional entitlement that members shall be able to speak as representatives of the districts they are elected to represent, and I believe that we as members have the undeniable right to voice our opinions and express our views on matters in accordance with the rights, duties, and obligations which members of Parliament undertake by virtue of being elected to Parliament. In addition, as a layman I maintain that no person shall be punishable or made to suffer in his person, goods, or reputation except for a distinct breach of the law, established by the ordinary process of law in the ordinary courts of the land. The problem exercising the minds of many members of the public is whether that process of law in this particular case has been carried out to its fullest extent. We have no complaints about the law itself. The defeat of the motion yesterday indicated that the Government would prevent any discussion dealing with the present uneasiness. Published in the press was a copy of a letter from Sir John Latham, former Chief Justice of the High Court, to the Premier, and I assume it was published at the Premier's request. Probably Sir John's political views and those of the Opposition are far apart, but his knowledge of Australian law cannot be disputed by any member of this House. After consulting with a professor at the Melbourne University, Sir John wrote his letter, saying *inter alia*:—

As the result of my interview I suggest to you that difficulties might be largely removed if the Royal Commission was now directed to report whether, in view of evidence that was not tendered at the trial, but which is now available, steps should be taken to set aside the conviction of Stuart and to provide for a new trial of Stuart by judge and jury.

All the matters in this case have not been ventilated. Yesterday the Government prevented any discussion on the matter and there has been little progress in the ventilation of the matters I have in mind. Sir John's letter also said "It would at least dispose of the idea that the Commission is itself trying Stuart without any jury." These are important words. I commend Mr. Dunstan for his contribution to this debate. He gave reasoned information about the composition of the Commission and reasoned criticism of its activities. He pointed out how the judges, sitting as Commissioners in this inquiry, could be criticized when no such criticism should be levelled against them when sitting as judges. We want to retain in the judiciary the confidence that has been in it over many years. It should not be subjected to criticism because of something the Executive has done. That is why we wanted to place matters before the Executive yesterday, but we were denied the opportunity. Even today we are limited in our discussion on the matter. At this late stage, and bearing in mind particularly the remarks by Mr. Dunstan, we should endeavour to act in a way that would restore public confidence in the judiciary.

Mr. JENNINGS (Enfield)—I wholeheartedly support the motion and believe that the House should take this opportunity of clearly saying that the Government has lost the confidence of the House and of the people of this State. These people have not had much confidence in the Government for a long time, as the recent State elections showed. Nevertheless, surely many of those who vote against the Government and deprecate the villainous electoral system that allows the Government to retain office expect some sort of decent and fair administration. That, however, has been completely exploded and they have lost faith completely in the impartiality of Government administration, apart from Government legislation in which they have had no confidence at all.

Events leading up to the establishment of the Commission were, not a comedy of errors, but a tragedy of errors—errors of ineptitude on the part of the Government. This sorry tale of events started when the Leader of the Opposition asked a question of the Government in this House. When I say "Government" I mean the Premier: they are interchangeable terms in South Australia. Mr. O'Halloran asked him a question about the appointment of the Royal Commission shortly after it was known to us that the appeal to the Privy Council had failed and that new evidence had been unearthed in Queensland. The Premier knew on that occasion that we had all our members in the House and that we were prepared to act quickly if he did not give some sort of satisfactory answer. He told us that arrangements had already been made that morning for a Royal Commission to be appointed and that three Supreme Court judges would be nominated commissioners. That sounded good. He said also that they would be authorized to investigate every aspect of the case.

Mr. Lawn—Hear Hear!

Mr. JENNINGS—His words are in *Hansard*. It is my personal opinion, based on close observation and a few years' experience of how the Premier acts, that the first the Cabinet, the judges, or anyone else heard of the matter was when the Premier answered the question asked by the Leader of the Opposition. He saw he was in a spot and took what he considered to be the easiest and quickest way out—but what in the long run has not proved to be the easiest way out. There is nothing new in the Premier's getting up in this House and saying anything that comes into his head. There is nothing new in his saying that the Government has decided to do this, that or the other, when Cabinet has never heard of it. The Premier does not need to worry about his Cabinet or the Party behind him. He is the great Pooh Bah, the Lord High of Everything, and in this case is likely to be the Lord High Executioner as well.

The SPEAKER—Order!

Mr. JENNINGS—The only time that the Premier amuses us is when he spars for time and says that he has to consult Cabinet about a matter, as if any member of that anaemic group would dare to oppose him. If any did he would not be in the Cabinet. That afternoon we saw a lot of frenzied goings on. The arrangements allegedly made in the morning had to be made in the afternoon after the Premier had already committed himself in the House. We know that there was a hurriedly convened meeting of the Executive Council late that afternoon at Government House to make the arrangements which the Premier said had already been made that morning. Apparently during the afternoon, after consulting the Crown Law authorities, the Premier was advised that he could not appoint a Royal Commission without giving it some terms of reference, so the terms were drawn up. We were astonished, after being told in the House in the afternoon that the Commission would

be able to investigate every aspect of the case, to read in the press next morning that the terms of reference were very restricted. The next opportunity we had to raise the matter was when Parliament met on the following Tuesday. On that day we naturally took the first opportunity we had to raise the matter of the terms of reference. The Premier was then questioned once again by the Leader of the Opposition, and he said he had given no undertaking to the House whatsoever! This is probably the first time in all recorded history that a person has been able to come along on Tuesday and deny to the same people what he said on the Thursday, yet every one of his auditors had a printed copy of what he had said on the Thursday.

Mr. Lawn—He did not even blush when he said that, either.

Mr. JENNINGS—Not a blush.

Mr. O'Halloran—You are not suggesting he is anaemic, are you?

Mr. JENNINGS—No, it is not lack of blood, but lack of conscience that prevents that.

The SPEAKER—Order!

Mr. JENNINGS—Nevertheless, after excusing himself in that way he told the House that the whole case would be sifted to the ground, that no stone would be left unturned and that the Commission would have full power to investigate every aspect of the matter. We accepted that, perhaps a little too trustingly. At the same time, grave doubts were being cast in the press, in legal circles and in this House about the wisdom and propriety of appointing as commissioners two judges who had previously been personally involved in the case. I believe this criticism would have been much greater if it had not been for the respect in which the judges are held personally by members of this House. I believe the fact that there was not much greater protest is a tribute to the judges themselves. The only reason why we object to their appointment is that they must inevitably have had some preconceived feelings about the matter and, in any case, whether that is true or not, the public generally would be entitled to feel that they had perhaps some prejudice as a consequence of their previous association with the case.

I want to make it quite clear, however, that our criticisms are directed against the Executive Government and certainly not against the Royal Commissioners. We do not criticize them but sympathize with them in the awkward and embarrassing situation in which the Government has placed them. What has happened since? Precisely the only thing that could be expected to happen in the circumstances—wrangling and intemperate speculation in the press, confusion and chaos in the minds of the people, and protests from every corner of the globe. As a consequence, I think it is beyond any doubt whatever that the people of South Australia have completely lost confidence, not only in the ability of the Royal Commission in the circumstances to do properly the job that was given to it to do but, further than that, in the Government that created the Royal Commission. We know that, because of the protests that have come from all over the world from people well qualified to give opinions on a matter such as this, the Government has been very worried. We have seen in this House, when questions have been asked about the Commission, that the Premier feels it a lot more than he will admit when he speaks.

Mr. Shannon—He is embarrassed for you people.

Mr. JENNINGS—He is embarrassed but he has never been embarrassed for us. He is embarrassed because of the precipitate action he took when he got up in this House and, without giving much thought to the matter, said he had arranged to establish a Royal Commission. He has seen the mess into which it has got him.

Mr. Riches—He is embarrassed because no member of his Party is prepared to defend him.

Mr. JENNINGS—I do not quite agree with that. I think the Premier knows the members of his Party so well that he fears their defending him because he realizes it would be the worst thing that could possibly happen to him. I think he realizes the limitations of his supporters so much that he has instructed them not to get up and support him today. It is only the accumulated arrogance of twenty years' dictatorship that has prevented him from giving in on this matter and coming to some arrangements that would satisfy all of us who want to see this matter prosecuted to a satisfactory conclusion. That would not be a sign of weakness, but the arrogance that has accumulated during twenty years' dictatorship prevents him from doing it. It is only that purblind political bigotry and egomania that the Premier has developed over those twenty years that has prevented him from gracefully giving in.

I believe the House can force him to the opinion by carrying this motion of no-confidence. Some of my colleagues may not be so sanguine as I am, but I sincerely believe the motion will be carried. Some new members on the Government side have been here now just long enough to see how this alleged democracy in South Australia works. I believe that some new members, reared in the calm pellucid atmosphere of small-town politics, have been shocked at the bludgeoning way in which the Premier endeavours to get his will carried in this House, and the opportunity is given to them now to assert their individuality and independence or they will go down, like the older members on the Liberal side of the House, till such time as they no longer have a spine to say other than "Yes" to anything the Premier says. They can assert themselves now: if they do not do it now it will be too late, and they will never have the opportunity again. They will have degenerated too far into the morass ever to extricate themselves. This is their opportunity, and I exhort them to take it. What they might lose immediately through unpopularity with their colleagues they will more than make up in self-respect. I support the motion.

The Hon. Sir THOMAS PLAYFORD (Premier and Treasurer)—The motion we are discussing is that, in view of the public disquiet concerning the Royal Commission and the flagrant denial by the Government yesterday of the right of Parliament to discuss the issue, the Government does not possess the confidence of the House. This is rather a peculiar motion in the sense that it starts by seeking to move a vote of no-confidence against the Government because of a vote that the House itself took yesterday, when it took the view—a view that I personally advocated—that a motion dealing with the composition of the Commission at this time would not be in the best public interest. After the motion had been moved—briefly, certainly—and responded to just as briefly by me, the House decided that it was not in the public interest that this matter should be debated.

Mr. Shannon—In other words, we saved the Opposition from themselves.

The Hon. Sir THOMAS PLAYFORD—I am not suggesting that, but that I have never previously known the Government to be censured for a resolution of the House. I have known Governments to be censured for not carrying out a resolution of the House, but this is an entirely new matter. This is a case in which the House decided on its own initiative, with every member voting according to his ideas, that it was not desirable to reconstitute the Commission—and that is implicit in the motion moved today. Members have been very careful to say that they do not in any way cast aspersions at our judges. I think every member who has spoken has said that, and I think I would be putting the position correctly if I said that they have said that the judges should be protected from being given the job of conducting the Royal Commission. They do not cast aspersions at the judges but think they should be relieved of this obligation. Let me, if I may, analyse that. Firstly, I point out to members that the case of Stuart was tried in the normal way in the Supreme Court of South Australia and the verdict was one of guilt. This verdict was reached, not by judges, but by a jury of 12 men. I do not know who they were or where they came from but they, having considered all the evidence and having gone into all the ramifications in a trial conducted in a manner that has been given every test, brought in the verdict.

Mr. Riches—They did not have a statement from the accused, did they?

The Hon. Sir THOMAS PLAYFORD—The statement by the accused was held by every judicial authority to be a statement that could not be tendered according to the law of the land.

Mr. Riches—They had no statement at all from the accused.

The Hon. Sir THOMAS PLAYFORD—Let me proceed, if I may. I did not interrupt members opposite, although they said some provocative things. The position is that the jury, having heard the evidence, the addresses of counsel and the summing up of the judge, gave a verdict of guilty. They did not add, what is quite commonly the case, a recommendation for mercy. There was a clear case in the first place and the jury decided that this man was guilty.

There was an appeal to the Full Court on certain questions of law. The Full Court heard these questions and decided that the trial had been proper and the verdict properly arrived at. There was then an appeal to the High Court which, having examined the matter, unanimously decided that the trial had been regular and the verdict properly arrived at. It was then taken to the Privy Council—the highest tribunal in our land. Having heard the case submitted by Mr. O'Sullivan, counsel

for the accused person, the Privy Council dismissed the case without even calling upon the Crown to present the opposite side of the question. Without even asking Mr. Chamberlain to address the court the Privy Council dismissed the appeal. Members opposite will agree that these matters must be tried according to law and they would not for one moment tolerate a position in which our justice was administered by a system of public expression by people who may or may not know very much about it.

Up to this stage the position was that the case had been tried according to law and had been dealt with according to law, but there were one or two problems associated with it which had been ventilated and which, although they were not raised at the trial, then became the subject of some public controversy. One was whether this person, who is of mainly aboriginal descent, understood English. At the time of the trial the question was raised whether he did in point of fact understand English and could have made the confession he did make or it was claimed he made.

Mr. Dunstan—In the terms in which it was expressed.

The Hon. Sir THOMAS PLAYFORD—Yes. Another question that was given publicity was whether this was a crime of the type an aboriginal person would actually commit. It was suggested that this was a crime that was abhorrent to the aboriginal blood which predominated in this man. Other matters were raised that I do not want to go into at this moment. It was suggested that the police had obtained the confession by improper methods and that there was evidence to this effect. These matters were all given much publicity in the press. Finally it was claimed that three new witnesses were available who had made public declarations which, if correct, would establish a complete alibi for Stuart. That was the position that existed when the Government considered the matter. We had in our possession some alibis that claimed to account for Stuart's movements between the hours that had been held to be important from the point of view of whether or not he did commit this crime.

I say with feeling that it is not pleasant for any Executive Council to have to make a decision on a matter concerning capital punishment. It is not an easy matter to make a decision against a prisoner. I am quite certain it is no easy matter for any judge to condemn a guilty person to capital punishment. I am certain there is no predeliction by anybody associated with the administration of justice to hound a person down, particularly when it is claimed he is innocent. I do not think any member would assume that any member of our police force, judiciary or executive would desire to do that. However, these were the claims that were being made in the public press. The police were accused in the press of forcing a confession by violence from an innocent man. I do not believe that any member who knows our police force, and who respects our police force for what it is, would seriously consider a charge of that kind. I know that the Leader of the Opposition would not do it and that he has never done it or raised that question in the House. That was one of the questions publicly stated as being an issue: that a man had been forced to confess: that he had had a confession bashed out of him. No honourable member would accept that. The Government was faced with the position that there were three people who had signed declarations covering Stuart's movements at the particular time and which were claimed to be an alibi. For honourable members' information may I read the communication I received from Stuart's solicitors in connection with this matter. The letter was addressed to the Chief Secretary to place before Executive Council, and it stated:—

We forward herewith a further petition by Rupert Max Stuart to be placed before His Excellency the Governor in Council at the earliest possible moment. We respectfully suggest that this petition should be read in conjunction with that lodged by Stuart on the 2nd July, 1959. We refer to our interview this afternoon with the Acting Crown Solicitor who inspected the originals of the declarations of which copies are annexed to this petition. In view of the very unusual circumstances surrounding these newly received statutory declarations we respectfully suggest that the Attorney-General should have the matters raised in the statements investigated without delay, as *prima facie* they are of vital importance, covering as they do the time which the Crown Solicitor in his own address to the jury suggested that the crime must have taken place.

I want honourable members to give particular consideration to the next sentence. It is:—

We think that the honourable the Attorney-General will agree that the declarants should be further examined and their statements tested by officers of or deputed by his own department.

Members can see that the request the Government had in connection with this matter was that the person concerned should have his death penalty commuted to life imprisonment and

that my officers should investigate the declarations. I did not act upon that request. My first reason was that if these papers were established as alibis, obviously the commutation of the sentence of death to life imprisonment would be entirely wrong. If this person had an alibi—and if it was a good alibi—obviously the question then was not whether he should be hanged or whether he should be given life imprisonment but whether he should not be given his freedom and his pardon begged for having been subject to all the inconvenience of the trial.

Mr. Clark—And the guilty person found.

The Hon. Sir THOMAS PLAYFORD—And the guilty person found, obviously. Quite frankly, the Government did not accede to that request by Mr. Stuart's solicitor because we did not believe that it did measure out justice to Stuart if the alibi would stand the test.

Mr. Dunstan—Was there not a request for a reference to the Full Court?

The Hon. Sir THOMAS PLAYFORD—I was going to come to that question because it was raised at the time. I believe it was raised by the member for Norwood.

Mr. Dunstan—And by letter from the solicitors for Stuart.

The Hon. Sir THOMAS PLAYFORD—Yes. It was raised at the time. I did have that question examined and, quite contrary to the statement of the member for Enfield (Mr. Jennings), before Cabinet decided upon a Royal Commission. I was informed by the Crown Solicitor—and I have a memorandum from him setting out the terms of the original discussions—that if it were referred under section 369 (*a*) and a petition were ultimately lodged for that purpose, it would go to the Full Court and the onus, of course, would be upon the prisoner's solicitors to prove the case. The matters that would be considered by the Full Court would be firstly, whether the alibis were, in point of fact, genuine, good and valid, and, secondly, whether they could have been reasonably produced at the original trial. The onus would have been upon the prisoner's counsel to establish those facts. There were a number of subsidiary questions—and many have never been publicly raised yet. I do not know whether they will be raised before the Commission because the Commission is being assisted by a counsel completely dissociated from the Crown. All the original questions would never have been able to be advanced, and the question whether the police had acted with propriety or not could not have been raised by anyone, nor could the question of whether this man knew the English language and understood the confession he was alleged to have signed. The only thing that could have been raised was the validity of the alibis that were advanced, and it would have had to be established that those alibis could not reasonably have been obtained at the relevant time.

On that question I do not believe the Full Court would have taken very long to arrive at a decision, although I am not presuming to know what that decision would have been. However, I say quite definitely that that would have given satisfaction to none of those people who were raising objections on all sorts of other issues. It would not have lessened public disquiet, and it would have been looked upon as a way of trying to cover up other matters which should have been investigated. That is my advice, and I believe that advice is according to the law. It did not appear to me or to Cabinet to be the appropriate method of dealing with this matter, and under those circumstances we asked the three judges to form the Commission. I point out that those judges were the same three judges who must have comprised a court if the matter had been referred under section 369 (*a*). Those judges would have been the three judges compelled to consider it. We asked the same judges to consider the whole question so that the entire matter could be sifted, I hope for good and for all.

I believe several important matters are associated with this case. There is, of course, the very important matter of the proper administration of justice as far as Stuart is concerned. If anyone can bring forward any evidence at any time that will establish or tend to establish the innocence of Stuart, it will receive the fullest consideration. I know that I can speak for all members in that regard.

Mr. Lawn—You cannot speak for the Commission.

The Hon. Sir THOMAS PLAYFORD—Honourable members opposite have said they have confidence in the Commission, but how can a person have confidence in the Commission on the one hand and have no confidence in the judgment of the Commission on the other hand? It is a remarkable trick of the mind.

Mr. Lawn—You said that any evidence can be placed before the Commission.

The Hon. Sir THOMAS PLAYFORD—It is the most peculiar line of reasoning imaginable. In the circumstances, the Government took what it believed, and what it still believes, to

be the proper action. I believe that if there are important matters that were not considered at the trial they should not be ruled out purely on technical legal grounds, and I think every honourable member would support that view. We did not want an appeal under section 369 (*a*) on purely technical legal grounds where counsel for Stuart would have been asked, "Why did you not produce this evidence at the time of the trial?" On that question alone there would have been difficulty in giving an answer. The second thing that would have been difficult was this: that at the trial the whole case centred on Stuart's agreement and his counsel's agreement that he did, in point of fact, go to Thevenard in the afternoon. His whole statement and his confession that one honourable member says should have been read in court was that he did go to Thevenard in the afternoon. That was Stuart's statement.

The SPEAKER—The Premier should not refer to any details of the evidence.

The Hon. Sir THOMAS PLAYFORD—No, Mr. Speaker. I do not desire to prejudice the hearing of the Commission in any way. All I want to say is that on purely technical legal grounds Stuart would have been faced with an intolerable task.

Mr. Lawn—He is now, isn't he?

The Hon. Sir THOMAS PLAYFORD—I believe that the position now is that the Commission will do its duty. A rather interesting question arises regarding the composition of the Commission. The commissioners are considering entirely new matters.

Mr. Shannon—A point that has been overlooked by some legal men.

The Hon. Sir THOMAS PLAYFORD—They are considering whether the new evidence would have had any effect upon the trial if it had been available at the time.

Mr. Dunstan—Are you saying that is all they are doing?

The Hon. Sir THOMAS PLAYFORD—The original trial was a regular one, and the only matter of substance that comes up for the Commission to consider now is whether there are any additional facts which were not before the judge and jury at the time of the trial and which, had they been before the judge and the jury, could have had a bearing upon the trial.

Mr. Dunstan—You said the confession would be investigated by the Commission. That is not a new matter.

The Hon. Sir THOMAS PLAYFORD—I have said repeatedly that the Government wants this matter sifted to see that justice is done in its most complete form.

Mr. Dunstan—Sifted to the ground in all aspects.

The Hon. Sir THOMAS PLAYFORD—The fact still remains that the Commission would not have been appointed except for the fact that it was claimed an alibi had been established, that new evidence was available, and that there were new facts that were not brought before the court at the time of the trial. What would have been the purpose of the Commission otherwise? The trial was a regular trial—no-one has suggested otherwise—and the jury was a properly constituted jury. The Government could have done one of two things: referred the matter under section 369 (*a*), or had it sifted by a Commission.

Mr. Lawn—The same judges in any case.

The Hon. Sir THOMAS PLAYFORD—I thank the honourable member for his remark. I believe those judges are the most competent people in South Australia to conduct this investigation. The interesting thing is that, although it is suggested that these judges might have been displaced or other people put in, there has been no suggestion as to who the alternative judges should be.

Mr. Lawn—I will make a suggestion: go to another State for judges.

The Hon. Sir THOMAS PLAYFORD—That is out of our jurisdiction.

Mr. Lawn—The Government can ask; that is the usual thing.

The Hon. Sir THOMAS PLAYFORD—The administration of the law here is held to be valid; it is held in the highest repute, and we have frequently seen the decisions of our judges upheld by the highest tribunals. In this case, the summing up of the judge has stood the test of every tribunal that has considered it.

Mr. Lawn—This State has been asked to make judges available for other States' Commissions.

The Hon. Sir THOMAS PLAYFORD—These were the judges available to the Government at the time.

Mr. Lawn—You could have asked for judges from another State.

The Hon. Sir THOMAS PLAYFORD—Yes, we could have, and we would have received a polite answer, too. The member for Adelaide's whole point is, of course, that the judges are not doing their duty; that is what he implies. I believe those judges have done their duty under the greatest difficulty.

Mr. Lawn—I did not say they had not.

The Hon. Sir THOMAS PLAYFORD—Why does the honourable member want to go outside the State for judges?

Mr. Lawn—I said that the appointment of this Commission was contrary to the accepted constitution of a Commission.

The Hon. Sir THOMAS PLAYFORD—I have some documents here—

The SPEAKER—I do not think it is proper for the honourable the Premier to refer to the documents he now has in his hand.

The Hon. Sir THOMAS PLAYFORD—The documents which I have here should be exhibited because a very important lesson could be learned from them. However, I accept your ruling, Sir. I will quote from a newspaper, because I think that is within Standing Orders. The newspaper I have here states:—

Mr. Shand, Q.C., indicts Sir Mellis Napier. "These commissioners cannot do the job."

These words were never spoken, yet they are put in inverted commas, and that is the sort of thing that has been used to try and drag our judges down. These words, or anything like them, were never spoken. They are the gravest libel ever made against any judge in this State.

Mr. Fred Walsh—Why wasn't a libel action taken against them?

The Hon. Sir THOMAS PLAYFORD—If the Government were to take action now it would be accused of trying to stifle public debate.

Mr. Hambour—And the Opposition would be the first to cry out about it.

The Hon. Sir THOMAS PLAYFORD—Yes, the Government would immediately be accused of trying to hide up. The Government will consider action at the appropriate time to protect our judges, make no mistake about that.

Mr. Lawn—That has no bearing on the matter before the House.

The Hon. Sir THOMAS PLAYFORD—If the Government took action today it would immediately be held as an attempt to try and stifle public opinion.

Mr. Stott—The Commission could make some comment on it.

The Hon. Sir THOMAS PLAYFORD—I believe that the Commission, considering the gross insults and attacks levelled at it, has been very forbearing, and I believe this House should carry a resolution of commendation to Sir Mellis Napier, who, in one of the most tragic times of his life, has been subject to the vilest abuse and yet has carried on his duties manfully and, I believe, with great dignity. I hasten to say that I do not associate the Opposition with attacks upon the judges, but I point out to the member for Adelaide that he is gravely inconsistent when he says he wants other judges and that the present judges will not give the decision he wants, whatever that may be.

Mr. Lawn—I did not say that at all.

The Hon. Sir THOMAS PLAYFORD—If not, I stand corrected.

At 4 o'clock, the bells having been rung:

The Hon. Sir THOMAS PLAYFORD—Mr. Speaker, I move that Orders of the Day be postponed to enable the matter before the Chair to be disposed of.

The SPEAKER—Orders of the Day Nos. 1 and 2 are private members' matters. Does the Leader of the Opposition agree to their being postponed as suggested?

Mr. O'HALLORAN (Leader of the Opposition)—Yes. I second the motion.

Motion for postponement carried.

The Hon. Sir THOMAS PLAYFORD—Many matters have been stated publicly a number of which, if I had made available public documents upon them, would have been immediately and completely refuted. However, I have taken the view that in this matter the accused person should be given every opportunity and that his case should not be prejudiced by bringing forward publicly a considerable amount of material which might or might not tend to incriminate him, and which normally would not be available under court procedure. For that reason much public disquiet has been raised on many matters on which, if they had been ordinary, everyday affairs and had not concerned the trial of a man for murder, documents could have been easily produced and probably proved completely satisfying. However, I am not going into these matters this afternoon because I believe that the proper course for the House to pursue, with all deference to the Leader of the Opposition, is not to censure the Government but to allow the Royal Commission to sift the additional evidence that is available for it to examine. Let me make this clear. This is only an investigation into an alibi or a series of statements which tend to create an alibi.

Mr. O'Halloran—You admitted this afternoon that there were a lot of other matters.

The Hon. Sir THOMAS PLAYFORD—The matters that have been brought in have not been brought in by the Government. A number of other matters have been brought in which, no doubt, if they are raised will have to be answered, but that will be done in the process

of testing evidence under well-established rules. This is not a re-trial, as I told honourable members at the time. A re-trial could not be ordered by the Full Court, although the Full Court could make certain recommendations. I suggest that the Royal Commission be allowed to complete its work, which it could probably do next week, when it could furnish its report.

One point raised this afternoon was that the person concerned did not now have counsel to defend him, but in that matter I have some hope that when the Commission sits again counsel will be provided for him. The Government has done its utmost to see that counsel is provided, and we have offered to pay for his services. I suggest that the Royal Commission be allowed to complete its work and bring in its recommendations. They would be public recommendations; and then if the Leader of the Opposition or any other person had any comment to make on them I should be happy to hear them before further action was taken. Needless to say, Mr. Speaker, I oppose the motion.

Mr. STOTT (Ridley)—I will not deal with any of the legal argument that has been, of necessity, brought into the discussion. I have had no legal training and I can only approach this matter with a layman's point of view. I have watched the proceedings of the courts and the Royal Commission because of the high public interest in the matter. Ever since I have been a member of this House I have stood for the properly elected representatives of the people having the right to be heard in this House. Yesterday I was absent from the House on urgent business affecting the State. As Mr. Quirke would be able to say, I had a conversation with him when I learned that I would be absent and told him I believed the motion to suspend Standing Orders to enable another motion to be moved should be supported. I would have supported the move to permit that if I had been here. It would have enabled the Leader of the Opposition to place his views before the House, but whether we would have agreed with the other motion is an entirely different matter. My point is that members should be heard in this place. I stand for that and I hope I shall never depart from it.

Because of the public disquiet concerning the Royal Commission and the flagrant denial by the Government yesterday of the right of members to discuss the matter, it is said that the Government does not possess the confidence of the House. I am glad that the Leader of the Opposition had the opportunity to express his views on the matter, but because it is *sub judice* he was not able to express himself fully. This motion is one of no-confidence because of public disquiet about the Royal Commission. Before I support such a motion I must first consider whether I have confidence in the Commission. Despite the statement in the press that the two trial judges should not be members of the Commission, it is undeniable that the judges did accept positions on the Commission, and by so doing they indicated that they believed they were capable of reaching a proper judicial decision. The proceedings of the Royal Commission have reached a certain stage and it would be wrong to dismiss the members of the Royal Commission and to interrupt the proceedings as far as they have gone. Whether rightly or wrongly, I cannot get over the hurdle that in voting for the motion I would be expressing a vote of no-confidence in the Commission, and as the representative of my district I cannot support a motion that is tantamount to saying that there is public disquiet concerning the Royal Commission. I am unable to support the motion of no-confidence in the Government.

There are other aspects of the matter that I cannot discuss but they have caused me some anxiety. Summing it all up, there appears to be a lot behind what has caused this anxiety. Frankly, I believe that the terms of reference are not wide enough. They may have been in the first instance, but as new evidence has been brought forward we should look at the matter from every angle to see what has caused public disquiet. At this stage we cannot alter the terms of reference and I am unable to indicate the aspects that have caused me anxiety about the Royal Commission. We should not call a halt in its proceedings, and believing that I must oppose the motion of no-confidence. If I vote for it, I vote for an interruption of the proceedings of the Commission. If we interrupt them we shall be doing two bad things to cause more public disquiet. Firstly, we would be saying that we have no confidence in our judiciary and that we suspect things that the police have done. Secondly, we would be saying that we want another Commission appointed. I cannot support the motion.

Mr. LOVEDAY (Whyalla)—I support the motion and want to deal with one point raised by Mr. Stott. He said he could not support any criticism of the Royal Commission because the judges had accepted positions

on it. The Leader of the Opposition pointed out that leading British authorities expressed surprise at the way in which the Commission had been constituted. They must have known that the judges had accepted the positions. They did not criticize the judges, so why did they express surprise? I am not a legal man but it is only a matter of commonsense to realize that they would take the view that justice must appear to be done. That is the real reason why they expressed surprise that the Commission was constituted as it was. That is the basis of the whole question of public disquiet on the constitution of the Commission. I now wish to refer to some of the matters the Premier dealt with this afternoon. Although he dealt with the procedure of the courts in this trial I noticed that he did not refer to the fact that the High Court expressed anxiety about certain aspects.

Mr. Dunstan—The High Court said that the actions of the Crown Prosecutor were unlawful.

Mr. LOVEDAY—That is true. The Premier said several matters were raised that were given great publicity and that finally three new witnesses were found to be available who were supposed to be able to show that an alibi could be constituted or proved. He said that this was the stage when the matter of establishing a Commission arose, when serious accusations arose of the police forcing a confession from an innocent man by violence. The Premier said that this was a grave issue and went on to say that insinuations were made against the judiciary. If that were so and these matters were as important as the Premier was trying to lead us to believe, surely that would be all the more reason why the greatest of care should be taken to see that when the Commission was set up it was constituted in such a way that no possible finger could be pointed at it. In my opinion the Premier, by his emphasis on that particular point, raised the issue that the very greatest of care should have been taken that the constitution of the Commission was above all public comment whatsoever.

We on this side of the House are not criticising the judges but say that the general public, with no inside knowledge of legal procedure whatever, must feel that justice is being done, and that it must appear to be done. I think the appearance that justice is being done is just as important as the actual doing of justice. In his emphasis on these two points concerning the police and the judiciary surely the Premier should have been concerned that the most complete investigation would take place on those two issues, but there seems to be a grave doubt on whether there will be a complete investigation. The Premier has told us on a number of occasions that this matter will be sifted to the ground yet, if my reading of a report in the *Advertiser* of what the chairman of the Commission said is correct, I would have grave doubts that these matters would be thoroughly investigated.

The Premier said this afternoon that the Commission is only considering new evidence. Surely there were a number of matters apart from new evidence in the minds of members of this House in asking that the matter be investigated. If one reads *Hansard* for the replies given by the Premier to questions on this matter one cannot but come to the conclusion that there were plenty of matters other than new evidence that this House desired to be investigated. As the speakers who have preceded me have dealt with the matter adequately, I wish to refer only to one other matter—that in the *Advertiser* of last Tuesday there were statements to the effect that the Commission as now constituted could be justified on the ground of some legal precedents. That may be so. I do not know anything about those precedents, nor do I think the man in the street knows or cares anything about them—all he is concerned about is that justice should appear to be done. That is the most important matter. The reasons we are discussing the matter are surely public disquiet and public opinion, and the public is concerned not with legal precedents but that the inquiry should be conducted by people who approach the question with a completely detached and fresh mind.

Mr. Shannon—Do you suggest these men have not done that?

Mr. LOVEDAY—I am not suggesting that as far as these people are concerned but saying that in the public mind it does not have that appearance. That is the whole crux of this matter. Anyone who was in this House yesterday must have been struck by the fact that a full discussion on this matter was being denied this Parliament. That is why we are debating it today, and it is amazing that we are now debating many of the issues we were denied the right to discuss yesterday. Many of the things we are now discussing could have been dealt with yesterday with equal ease but, instead, we have had to force the issue on a censure motion. What took place yesterday was a good indication that members opposite feel they are in an unassailable position and do not have to take much notice of

what comes from this side of the House. I am satisfied that members on this side who have been here for any length of time are beginning to feel frustrated by this attitude of Government members. This motion is justified, and if the people of this State do not take notice of what happens in relation to matters of public importance raised in this House they will get precious little satisfaction in matters of any kind. I support the motion.

Mr. QUIRKE (Burra)—I do not support the motion, and I will give my reasons. It is always dangerous to give reasons because, as has been said on other occasions, they might be the wrong reasons. However, on this occasion I think I am right. The motion before us commences with the words "That in view of public disquiet. . . ." It has been accepted so far that there is public disquiet, according to the members who have addressed themselves to this debate, but I find no evidence of public disquiet regarding the operation of the Royal Commission. As a matter of fact, by close questioning throughout the country wherever I have travelled, I have found nothing but complete confidence in that Commission. The people of South Australia quite obviously have a much higher regard for the judiciary of this State than some of the people who have spoken today.

I endorse the remarks of my colleague, the member for Ridley. Yesterday there was a motion to suspend Standing Orders in order to discuss this matter. This was refused, I believe quite wrongly, as this unseemly discussion has revealed, because the tone yesterday, had that motion been allowed to proceed, would have been better than that today. In the last 18 years I have never cast a vote that would preclude anyone from having a say in this House. Any political party adopting the attitude of stifling a debate can ultimately doom itself to extinction. It is dangerous and, more than that, it is completely wrong. I voted for the motion yesterday. What I would have done on the substantive motion rests with me. Twice in a fortnight I had to vote in such a way because of two refusals, and I hope I do not have to do it again, at least during this session. I endorse what the member for Ridley said—that this can be, and is in essence, a vote of no-confidence in the Commission.

A Member—That is silly.

Mr. QUIRKE—Some member says it is silly, so let us look at it. If members are satisfied with the Commission why do they seek its reconstitution? If a reconstitution is sought it can only be on the ground that it is an appeal from Caesar to Caesar, which is usually said to be wrong. May I put the entirely new viewpoint that this is a fact-finding Commission, and who is better able to ascertain the facts of this case than the people who heard the previous evidence, and who can relate it to any new evidence? If we say they are not competent to do that, that they will not do it, that they cannot be expected to do it, and that it is completely unfair to ask them to do it, what is that but a vote of no-confidence in the Commission? That would mean that we feel they are unfitted for their posts, because that would be the effect of this motion.

It was decided that a Royal Commission should sift the new evidence, and three judges were appointed. Those three judges right through their history have had a status and a standing for impartiality and honesty in their judgments. Can one finger of scorn be pointed at them on any one aspect of their discharge of the duties of their office? We cannot assume that they are wanting in knowledge. They have a high judicial standing and, in response to a request that they act as a commission, they accepted that commission. There was no compulsion on them and if they had any doubts in their minds on whether it was right for them to accept the commission are we to assume that they, being honourable men, would not at once have raised their own objections? It has been said here this afternoon that we are not criticizing the Royal Commission. What is being done in asking for this reconstitution if we are not doing that? We cannot be doing anything but saying that they are not the right and proper persons to sit on that Commission. That, in my view, is entirely wrong. If there is any disquiet—

Mr. O'Halloran—You said a while ago there was none.

Mr. QUIRKE—Not about the Commission, but about an entirely different thing—the poor report and the spate of hysteria that certain sections of the press have endeavoured to bring on this matter. Let us assume that the finding of the Commission is such that a re-trial becomes necessary. Where will we get a jury of 12 men who have not already prejudged this case? With the spate of propaganda it can be assumed that everyone in the community has his or her opinion and, in fact, has prejudged the case. I do not profess to answer that because, quite frankly, I

do not know the answer but, if there is any disquiet in my mind, it is disquiet about that. It is a very real difficulty that would present itself were a new trial found necessary. We cannot say whether that is necessary. We cannot anticipate any finding of the Commission but, for my own part, I am prepared to let three men of such status, standing and honourable intention decide whether the evidence they previously heard is in any way altered by any new evidence that may be presented to them. I suggest to this House that no-one else is better qualified than they to judge.

One other thing I deprecate here is that this debate on a motion of censure should be used as an opportunity for a personal attack on the Premier. I am not usually a defender of the Premier; I have opposed him on many occasions as strongly as I oppose this motion, but some things said today about him are as completely unjustified as is the line of reasoning about the Commission. We have gone through gerrymanders from Dan to Beersheba; we have had it everywhere. I have heard so much about gerrymanders in this place that it is like a decimal recurring to the nth degree. The Premier is a member of the Executive, but the Governor in Executive Council appointed this Commission, so why attack the Premier? If somebody said that the other members of Cabinet were sycophants, would you say that His Excellency in Executive Council was, too?

Mr. Dunstan—He has to do what he is advised by the Ministers.

Mr. QUIRKE—Of course, but he is the head of the Executive Council and whatever is said against them is held against him.

Mr. Dunstan—Nonsense!

Mr. QUIRKE—It is not, because in that office he has the power, if necessary, to refuse injudicious advice. If that was not so, there would be no purpose in his being there. The Commission apart, I think the Premier and his Cabinet have had a terrific strain imposed on them on this occasion, and nobody will induce me to believe that they have approached this matter in a light-hearted "don't care" attitude. Nothing of the sort has happened. Every member of the Opposition or I may disagree with the Premier on occasions, but I defy anybody on either side to say that he has been anything but fair in this House. He takes political advantages, as would anybody in his position, but that is inherent in the game and no quarter is given or asked for on occasions. He acts as he sees fit for he is the tactician in Parliament and he works it out that way. Personally, I cannot accuse him of ever being unfair to me, though on many occasions he has had no reason to thank me.

Mr. Clark—You voted for the adjournment motion yesterday.

Mr. QUIRKE—Yes, in order to give the right to present the substantive motion, but the Premier is the tactician and those are his tactics.

Mr. Clark—You say that is unfair.

Mr. QUIRKE—I ask the Opposition: how often would they do that if they were the Government, and how often is it done by other Labor Governments? That cannot be held against him. I say it is wrong. He may not agree with me in that respect, but I deprecate the attack that has been made on him personally here this afternoon. It was not right: it was unparliamentary and certainly did not uphold the dignified attitude of the Leader of the Opposition who, when he introduced this motion, did so in his usual dignified fashion, fairly and reasonably.

Mr. Shannon—We all noticed that.

Mr. QUIRKE—Everybody could not but help notice it, but then followed at least two speeches that did nothing but write down the Opposition. For the reasons I have given I do not support this motion. The Commission is well constituted and well able to do the work it was commissioned to do. It will do it absolutely fairly and its report will be a reflection of the true position of things as they were presented to it.

Mr. JOHN CLARK (Gawler)—At the outset, let me say I desire to support the motion. A certain amount of confusion seems to have arisen—at least, a certain amount of concentration on one aspect of the motion, almost to the entire exclusion of the, in my opinion, most important angle of the motion. Therefore, I think it right at this juncture to re-read the motion because, to a large extent, we have strayed away from it. It is as follows:—

That in view of public disquiet concerning the Royal Commission and the flagrant denial by the Government yesterday of the rights of Parliament to discuss the issue the Government does not possess the confidence of this House.

In my opinion and in the opinion of many of my colleagues, the most important part is the words:—

. . . flagrant denial by the Government yesterday of the rights of Parliament to discuss the issue.

In the main, I want to deal with that now. It is not possible, of course, nor do I desire,

to exclude the other sections of the motion from my remarks, but the issue to be kept clearly before us today is the fact that yesterday afternoon we suffered the abominable experience of the right of speech by a member of Parliament representing the people of his district—in other words, "the voice of the people"—being stifled in this place. Members, whether Government or Opposition, realize that a censure motion is always the last expedient. It is used when all else fails. If anybody bothers to look at the front page of the *News* this afternoon, he can read plainly there that it is the first time this Government has been challenged in a no-confidence motion from Labor for 21 years.

Mr. O'Halloran—That is not correct.

Mr. CLARK—No, I do not think it is correct. I am glad the Leader of the Opposition mentioned that because I remember the time when a former Leader of the Opposition, Mr. Richards, moved a no-confidence motion years ago. I want to speak about Parliament itself. I am proud of this place. When I came into Parliament I was proud to be here, and still am. During the seven or eight years I have been here, I do not believe that any motion has come before the House of Assembly more important than the present one. Despite the fact that we have had a number of red herrings drawn across the trail, it is still an important matter that every member must decide for himself.

I believe the action of Government members in denying us our right of free expression yesterday must be censured, irrespective of what we think of the constitution of the Royal Commission or anything else of that nature. Surely members will agree that there is a general feeling of disquiet throughout the State over this case. I come from Gawler by train daily and every day people, including many strangers, come and speak to me and ask what will be done about this particular issue. As a Parliament we cannot afford to have either our judiciary or our police force regarded as other than above suspicion, and the Opposition's object is not to cast doubts upon either of those bodies, but to remove such doubts. That prompted our motion yesterday. As an elected member I claim the right—not just a privilege—of saying what I think in this House.

I believe in and respect Parliament. Unfortunately, at times, members tend to forget that the Parliamentary institution has grown up through blood, sweat and tears over hundreds of years and that the privileges and rights we now enjoy were not easily won. If a person were to ask any member when the institution commenced I suppose he would scratch his head and perhaps suddenly remember the name of Simon de Montfort and say that he was responsible for the first Parliament. To some extent that may be right, but if we bothered to think we would probably recall that some form of Parliament existed long before then. In Biblical times, when people were mainly nomads and wealth was measured in terms of flocks, herds and the number of sons a person had, some types of councils were held and probably the most important spokesman in those councils would have been the wealthiest member of the tribe. Of course, we have not entirely got rid of that aspect today. We might remember, too, in passing, that later, when people discovered that seeds would grow and when villages and towns grew up, there was a system of Parliament in village councils. In order to revive in members the belief that Parliament is an important institution that should not be flouted at the will and behest of one person, no matter how fine a fellow he may be, I suggest that four important historic steps have led to our present system of Parliament. I do not want to be too academic, but we should realize that Parliament is more than just a place where we sit and talk and where certain people do as they please.

The first important historical step was in 1215 when *Magna Carta* was signed by King John. Of course, he did not actually sign it, because he could not write: he only put the Great Seal of England on it. He had no intention of keeping to the particular matters he put the Seal to, but it was important because it was the first step to take away arbitrary power from the King and to remove the power over the nation from the hands of one man. There again, even after all these years, I am not certain that we have got completely away from it.

Mr. Jennings—I wonder if we could get Playford to sign it?

Mr. CLARK—The second important step was the struggle between the King and Parliament in 1649 when the King eventually lost his head after fighting with his Parliament. We want to remember that because of the Reformation and Renaissance in Europe people started to think for themselves, and the Parliament did get a greater share in the government of the country. This was an important step because it gave more power to the Parliament and limited the power of

one man—the King. The third step was the bloodless revolution of 1688 when King James II was Constitutionally got rid of by his people. That action established the fact definitely that future monarchs must rule Constitutionally because otherwise the people would get rid of them. Shortly after that period we developed to the stage where the King acted on the advice of his Ministers. It was by no means democratic at that stage, but democracy was on the way. The Party system crystallized in the time of King George I. He was a German prince who could not speak English when he came to England and he never bothered to learn it. He had to place his trust in someone, so he placed it in the leader of the Party that had the most members in Parliament.

The fourth step, and the last I want to mention, was the first Reform Bill in 1832 when, to the horror of many people, a few additional people were given a vote in England. Previously the vote had only been given to the big landowners and persons of that type. There again, we have not completely got rid of the idea. It is interesting to note that when the first Reform Bill was passed members were not paid, yet some members of Parliament were known to have spent £20,000 or £30,000 to get themselves elected, so there must have been some advantage in getting into Parliament. That is one thing that has changed. Any member of Parliament nowadays who manages to feather his nest financially through his membership is a greater wizard than Houdini.

Since the first Reform Bill the franchise has gradually been extended and, although it was only at the last election that women were first admitted to our Parliament, South Australia was the first place to give franchise to women. I believe that Parliament and the Church are the two most important institutions in our community. We should note what changes have come about, and I will refer briefly to them, because it is essential to realize the importance of the place in which we live and work. We should not let our intimate contact with the institution of Parliament lead us to believe that a Parliamentary sitting is just a matter of course. Important changes, and changes that we should live up to, have taken place in the last thousand years. In the old days the Sovereign might call a Parliament together, but now, of course, he must do so. We were told this afternoon by one member that the Governor is held responsible for certain things, but I point out that the Governor represents Her Majesty the Queen, therefore Her Majesty would be held responsible also. However, I cannot see that that applies in this issue at all.

The second change worthy of notice is that in the old days the calling of Parliament was only occasional and at the King's pleasure. Now, of course, it is regular, although it is not regular enough at times. In the old days members were selected, whereas now they are elected, under a free and democratic franchise in most British countries.

Mr. Jennings—A noticeable exception being?

Mr. CLARK—I was forbearing to mention that, but obviously the answer to the honourable member's question is that I, along with him, am not happy about our system here. I suppose the most important point is that the real power passed from the King to the Parliament. The King nowadays can only act on the advice of his Ministers who are responsible to Parliament, which in return is responsible to the people and, theoretically at least, if the Government lets the people down the people show their displeasure by voting the Government out at the next election, but the latter action would be very difficult in this State under the existing set-up.

I remind members, more than half of whom apparently forgot the fact yesterday, that Parliament really is an important body, not because we as individuals make up Parliament but because we represent the people in our districts. We are here to speak for them and should be allowed to speak for them. We only have to remember what happens when Parliamentary Government fails, as I suggest that it did yesterday. We have to look back to the 1930's, which history will probably remember as the dictatorship era, when countries were ruled by such people as the now fortunately departed Hitler, Mussolini, Stalin, Peron and the like. Those men have gone, and very few dictators remain, but unfortunately the smell of them still lingers.

Mr. Lawn—There is one here.

Mr. CLARK—We in South Australia do not like dictators and never have liked them and we do not like dictatorial action such as I suggest we had yesterday. I know the Premier told us that the motion defeated yesterday was defeated not by the Government but by the House. I suggest that but for the action of all Government members voting as one voice—and, indeed, of course, they were one voice—our expression of public opinion would not have been stifled yesterday. I have no objection

whatever to a Government using its majority to pass or reject legislation, even if I do dislike the method by which that Government obtains its majority. I believe it was the member for Burra who said that a Government in power has the right to use its numbers, and I agree with that, but I do not think it has a right to use its numbers to defeat and stifle an expression of opinion by members of the House. I have heard the Premier—and I have always been in complete accord with him on the point—boast in the House, and privately, that we do not have such a thing as a gag in the South Australian Parliament, but unfortunately the events of the last few days have proved that, if we do not have a gag, we have something for which I do not know just what the name would be.

Mr. Frank Walsh—We had it last week.

Mr. CLARK—Yes, and we had it again yesterday. The Opposition objects to that and seeks to censure the Government for denying an opportunity of free speech in this House, particularly on such a vital issue as this one on which so much depends. We have heard all sorts of derogatory remarks regarding articles published by a certain newspaper, but I suggest that but for the actions of that newspaper and people associated with it we possibly would never have come to the stage where a Royal Commission was felt to be necessary at all. The newspapers have normally not been remarkable for their friendliness to my Party, but I believe we must be fair on an issue of this nature. I sincerely believe that such behaviour as we had in the Parliament yesterday is nothing but an insult to our hard-won Parliamentary traditions and privileges. Parliament, with all its faults, is a heritage of which we all should be proud. I am reminded of the words of the historian, G. M. Trevelyan, regarding the British Parliament:—

> No man made it for it grew. It was the natural outcome through long centuries of the common sense and good nature of the English people who have usually preferred committees to dictators, elections to street fighting, and talking shop to revolutionary tribunals.

I suggest that the spirit of the British people, as shown in their Parliament, is the spirit of free discussion, but this was denied us yesterday. No matter what Party I belonged to, in such an instance as this I would object most strongly to being gagged by numbers when it was necessary to speak. I support the censure motion.

Mr. SHANNON (Onkaparinga)—Before the member for Gawler rose to speak I thought this debate was becoming rather tiresome and that, in fact, it was almost on its last legs. If it wanted a push over the edge, I think it has just had it. The historical review, according to one of my friends, was not even accurate, and even if it had been it would not have been very entertaining, very interesting, or appropriate to the argument before us. It appears to me that we must return to the points at issue, of which I believe there are two: firstly, the Leader's charge that yesterday's vote denied him the right of full dress debate; and, secondly, the reconstitution of the Commission. I join with the member for Burra in commending the Leader for his usual temperate approach on occasions such as this. The Leader said, in effect, that the failure of the Government to provide an opportunity for a full dress debate yesterday was a denial of the right of freedom of speech in this House. The denial was made on a ground which, had that debate taken place yesterday, the Leader in his embarrassment would have been the first to admit. I think he would have been the first to say, "I wish I had never seen this motion." Had the debate taken place yesterday as envisaged, with a complete review of this unfortunate case, I for one would have felt that this House had not done itself any great service.

We have had some debate on the matter today, and the Leader, in my opinion, made a very good stand. Had that stand been adopted by all the members of his Party we would possibly have come to a test of strength, which, after all, such a motion must lead to. I do not think any member of the Opposition would expect a Government member to vote his Party out of office. The Independents, of course, are perfectly independent.

Mr. Fred Walsh—You're telling me!

Mr. SHANNON—They can decide for themselves. They have no allegiance to worry about. The Leader of the Opposition tried to put himself in right when he asked for the reconstitution of the Royal Commission that had been set up to do a job, and he tried to justify it by saying that he had perfect confidence in the members of the Commission. Inherent in the motion is a vote of no-confidence in the Chief Justice and his colleagues who are sitting on the Commission. I do not believe that the Leader intended that, but possibly he was led into a position which, on mature consideration, he would have avoided.

Mr. O'Halloran—I would have moved a much stronger motion if I had been permitted.

Mr. SHANNON—If that is the honourable member's attitude I regret he has not seen the error into which he has stepped. I now want to deal with several matters that have been mentioned in this debate. Mr. O'Halloran quoted Mr. Sheahan of New South Wales, and Sir John Latham, and overseas people. There are cases in our records in which the results of trial have been questioned and inquiries made about statements that would leave some doubt as to the justice of the trial. Some have been quoted. Mr. O'Halloran had the temerity to quote Mr. Sheahan. The fact is:—

In New South Wales there is the precedent of Craig's case. Craig had been tried on three occasions. On the first two trials the juries had disagreed. On the third Craig was convicted. His appeal on the grounds of fresh evidence was heard by the Full Court constituted by the three judges who had presided at the three trials.

The three judges who tried the man in the three stages continued to be sufficiently fair and realistic as to be able to look at the fresh evidence and decide his fate.

Mr. Dunstan—That is perfectly proper as I have previously said.

Mr. SHANNON—Then I think the honourable member has come round to sound reasoning at last.

Mr. Dunstan—If you had listened to my speech you would have realized the position.

Mr. SHANNON—I have made some notes about the honourable member's speech and they may be of interest to members who were not here. I do not agree with many of his quotations. In another case the facts were:—

In *Davies v. Rex* the first appeal to the Supreme Court of Victoria had been dismissed and the application for special leave to appeal was before the High Court when some further evidence was discovered. In the result a petition was presented and referred to the Supreme Court under a provision corresponding to our section 369 (a). It was heard by the Full Court constituted by the judges who had dismissed the first appeal.

There are people in the Eastern States who have the utmost confidence in their judiciary. There are people in South Australia who have little confidence apparently in our judiciary.

The Hon. B. Pattinson—There are a lot in Parliament.

Mr. SHANNON—I hope there is none. Public disquiet is one reason why this motion is before us. Don't the movers of the motion trust Sir Mellis Napier, Mr. Justice Reed or Mr. Justice Ross? Is the disquiet caused by a fear that these three men may do the wrong thing?

Mr. Corcoran—We have not suggested that.

Mr. SHANNON—Then why the disquiet? If these three good men can be trusted, why the disquiet that has been mentioned so much by the Opposition?

Mr. Fred Walsh—You won't deny that some concern has been expressed?

Mr. SHANNON—I want to know why the disquiet has been mentioned. I hope the honourable member is not joining the fraternity that has some doubts about the integrity of our judiciary. I do not think he is joining it. I do not think he ties himself up with that gang.

Mr. Fred Walsh—You won't tie me on that.

Mr. SHANNON—The interjection indicated it. I hope he does not become associated with that company. It is said that, contrary to the claims made about the appropriateness or otherwise of having the trial judge on the panel to investigate new evidence relating to the trial, great advantages could accrue from having the trial judge on the Commission. I agree that that is so. Who is better informed upon the background of the case than the judge who conducted the trial? He is better able to put the new evidence in its true perspective. Obviously the view expressed by the commentator has a lot of weight. Sir John Latham's name has been mentioned.

Mr. Corcoran—What did he say?

Mr. SHANNON—He said:—

I have just spent two hours with a professor of our university who came to see me about the Stuart case. He had various ideas which were strange to me. I found that he had little comprehension of the distinction between the functions of judge and jury in a criminal trial. He thought that the trial judge and the judges upon appeal made up their minds upon the truth or falsity of the evidence before the court. I am certain that this ignorance is widespread. Perhaps a statement on the subject might be useful. As a result of my interview I suggest to you that difficulties might be largely removed if the Royal Commission were now directed to report whether, in view of evidence which was not tendered at the trial but which is now available, steps should be taken to set aside the conviction of Stuart and to provide for a new trial of Stuart by judge and jury. It appears obvious to me that the Commission would report on this matter under the present terms of reference, but it is not obvious to the public. It would at least dispose of the idea that the Commission is itself trying Stuart without any jury.

Obviously Sir John understands the position. Obviously someone was out to use him in a way to which Sir John would not have been a party. He is well aware that this Royal Commission, after it has made a decision on fresh evidence brought forward for consideration, will make a recommendation either that

a new trial be held or that no new trial is necessary. He knows that this will have no effect upon the fate of Stuart at this stage. How the new matters arose is something that arouses my curiosity. How came it that certain people through a certain newspaper on North Terrace journeyed to Queensland? Who paid the expenses? Who was the instigator who knew that there was something there for them to get? They are all very interesting factors that people are curious about. I do not know whether even the Royal Commission will be able to discover the driving force that sent people to the northern tip of Australia to come back with further evidence. It is a strange thing that a certain employee of this newspaper went so far afield.

Mr. Dunstan almost vociferously proclaimed that the members of the Royal Commission were held in the highest esteem, but in the next breath said, and I quote his words, "conceived their duty to be." Is there anything to be inferred from the word "conceived"? I leave it to members who heard Mr. Dunstan utter it to work out what was meant. I know what he meant, and he knows what he meant. There was no insinuation; it was a straight out statement, and in my opinion a shocking statement, to come from a member of his profession, and I deplore it. I felt so hotly mad that I wanted to get up and make him withdraw it there and then. He also remarked that the Commission was asked to pass on things upon which they had already passed. Is that his conception of holding in the highest esteem the integrity of these three commissioners? If it is, I am glad that we do not have any wider field to debate. It is amply wide enough for me. I feel now that this debate is so near dead that I am prepared to vote, rather than continue. Of course, as usual, I support the Government.

Mr. MILLHOUSE (Mitcham)—In opposing the motion, I want to say only a few things. I agree with the last remark of Mr. Shannon that the debate is almost dead. The ground has been well covered. I am quite confident that no reflection can be cast upon the way the trial was conducted. Subsequent appeals were taken to the various courts, and in view of the way the Commission has conducted itself so far, I am happy to allow it to continue, to reach its findings, and to present them. Then, as the Government has said time and time again, it will be competent to decide what the next step should be. In saying that, I should like to mention just one point made by Mr. Loveday. He suggested that the Premier, in speaking in this debate, had omitted to mention the doubt which the High Court of Australia expressed when giving its judgment. That may be. We have heard that for weeks now, but the plain fact is that in spite of the use of the word "doubt," the High Court dismissed the appeal.

That was the very reason the appeal was taken to that Court. If the judges who composed that court had considered there was any reason why the appeal should have been allowed, they would have allowed it. That is the point that needed to be made again this afternoon, in view of what Mr. Loveday had said. I point out as Mr. Shannon has done, that there is ample precedent both in this country and overseas for judges who have been judges in first instance and presided at a trial forming part of an appellate court. That is incontrovertible. As Mr. Dunstan has done, I have read at least parts of the transcript of the Royal Commission. I do not claim to have read all the 380 pages, but I have read parts that put to rest any doubt I may have had regarding the conduct of the Commission. That substantially is why I oppose the motion.

I should like to mention two other matters. First, it is most strange that Mr. Dunstan should pay a graceful compliment to the three members of the Commission in one breath, and in the next breath apparently suggest that they should be summarily dismissed from the Commission. There is no other construction possible to be placed upon his remarks. That is a very strange thing for anybody to do, and personally I cannot reconcile what he said when he spoke this afternoon. Either he has confidence in these men, as I have, or he has no confidence and considers that they should be dismissed from the Commission. He cannot have it both ways, and neither can other honourable members opposite.

I hope that if the Leader of the Opposition replies, he will at least reply to the point I now raise. It was last Thursday afternoon that he first gave notice of a motion on this subject. At that time, if my memory serves me correctly, the Commission had not been sitting for about a week. Everything that has been put in argument by honourable members in favour of the censure motion could and should have been put, most properly, when the members of the Commission were announced. As far as one can discover

there has been no suggestion of any impropriety since then. Mr. Dunstan suggested that His Honour the Chief Justice and Mr. Justice Reed should not have accepted, nor should they have been offered appointment as members of the Commission. Surely the time to take that objection was when the announcement was made of the members of the Commission. Yet it was not taken. What do we find? We heard a long tirade from the member for Enfield this afternoon about the way the Commission was appointed. This was, of course, absolute nonsense. As we all remember, on a Thursday afternoon the Premier announced in the House the formation of a Commission and the next day the names of the judges who would form the Commission were announced. The next sitting of this House was on Tuesday, August 4. In questions on that day both the Leader of the Opposition and the member for Norwood pressed the Premier about the Royal Commission, but there was not a word, not a suggestion of comment, from the Leader on that day as to the composition of the Commission. The only points raised on that occasion were as to the terms of reference.

Mr. O'Halloran—Did not the member for Adelaide mention them in his speech on that day?

Mr. MILLHOUSE—Perhaps he did, but why did not the Leader or the member for Norwood mention them?

Mr. O'Halloran—Because I had already spoken on that debate.

Mr. MILLHOUSE—I am talking about questions asked of the Leader of the Government, who was pressed as hard as the Opposition could press him on this matter. In none of those questions were the names of the commissioners mentioned, nor was any question raised about them. The only matter raised on that occasion was the terms of reference. If the Opposition was really genuine in complaining about the composition of the Commission that was the logical time to raise the matter—before the Commission began its sitting—but we heard not one suggestion from the two members who, after all, have been the main spokesmen for the Opposition on this matter. That is a peculiar thing if the Opposition is at all genuine, but even more peculiar is that as late as last Wednesday there was no suggestion of a reflection on the Commission. This is what the Leader said in the first question he asked on Wednesday, August 26:—

Although the Opposition is not abandoning the original request that a full inquiry be held into the Stuart case—

Everybody agrees that that should be done, and the Premier has given ample assurance that it will be done. The Leader went on:—

—or reflecting on the conduct of the inquiry up to now . . .

That was the next phrase he used a week ago today! In specific terms he said, not that he, but that the Opposition was not reflecting upon the conduct of the inquiry up to now, yet the next day, although the Commission had not sat in the meantime and nothing had happened to alter the position, he gave notice of motion, which he brought up again today. How can one possibly reconcile genuine doubt and anxiety on the part of the Opposition with that statement made a week ago? It is an incomprehensible thing: I cannot understand it and I would like to hear the Leader explain it.

The Hon. G. G. Pearson—It had a good deal of publicity in the meantime.

Mr. MILLHOUSE—As I am reminded by the Minister, there had been a good deal of publicity in the meantime, and the only possible explanation I can see—and I will be glad to be put right on this if necessary—is that the Opposition, in a cynical attempt to cash in upon the newspaper campaign that has been waged in this State, has moved this series of motions. That is the only possible interpretation I can put on the motion before the House today. I very strongly and very definitely oppose the motion.

Mr. FRED WALSH (West Torrens)—But for the last two speeches I would not have entered into this debate, but would have let the matter rest, as it was reaching its dying stages. The size of the gallery may have had some effect on that. One judges from experience that the bigger the gallery the bigger the show, and when there is no gallery the same interest is not taken by members in the debate. Despite the fact that the Leader has moved this motion on behalf of the Labor Party, only three members opposite have seen fit to oppose it. There may have been reasons for that that have not been given, and it cannot be suggested that the last speaker made any contribution whatsoever. One would have thought that a man with his legal training, which I do not profess to possess, would have made some reference to the legal position, but he did not do so, and that is beyond my comprehension. Every member of my Party was surprised to see me here this afternoon. None of them knew I would be coming back from Melbourne, and I did not intend to come, but I was spoken to by telephone last night by a

representative of one of the Adelaide newspapers.

Mr. Lawn—It was not the *News*, was it?

Mr. FRED WALSH—It was not. This representative advised me that the Opposition intended to move a motion of no-confidence in the Government and that there was a good chance that it would be carried. I said, "Are you kidding?" He said, "Don't you think there is?" I said, "No, I do not. For one thing, I do not think the Independents would support it by any stretch of the imagination because it would mean an election and they would be the last in the House who would want to face an election." My views have been borne out today by the statements made by the two Independents. I still did not intend to return at that stage but, after turning it over in my mind and realizing the position, I thought I should be here to support my Party on such an important matter. I rang the T.A.A. office at 12.45 a.m. asking for the necessary bookings, and finally I got them. I had intended to go back to Melbourne this afternoon but, as the debate has dragged on, I have been forced to cancel the booking.

On Monday afternoon this matter was the subject of a resolution before the A.C.T.U. Congress that I was attending. This was attended by over 400 delegates representing 1,250,000 workers throughout Australia. While it is true that resolutions had been submitted from different parts of Australia of a much more drastic character than that which was finally carried on the recommendation of the interstate executive of the A.C.T.U. I was of the opinion that it was rather a moderate resolution that was accepted. That resolution was carried unanimously by the Congress. That was another thing that convinced me that I should be here to record a vote on this matter. I appreciate and accept all that has been said by the honourable member for Onkaparinga (Mr. Shannon) about the prestige, honour and reputation of the Commission. Not one Labor member would disagree with him on that. We subscribe to it entirely, and I in particular, but many people throughout Australia are concerned at the trend of this matter.

Mr. Lawn—And throughout the world.

Mr. FRED WALSH—I am not concerned about the world; I am concerned about Australia. The colour question involved does not concern me either, because I want justice done to a coloured man as to a white man. It is my feelings in that regard that make me express my views. The Commission has been faced with a difficult task; nobody will deny that. It has been attacked by certain sections of the press, of the judiciary itself in other parts of Australia, and of the church—not an aggressive attack but one of offensive criticism. The thoughts of such people must be considered when we are dealing with this matter, which has developed as a result of a certain course of events. What has inspired it or caused it to worsen I cannot say. I have certain views, it is true, that may not entirely coincide with the views of my Party but, now that we are faced with the position that the Labor Party yesterday was not given the right to express itself on the motion that the Leader of the Opposition intended to move, this is the only way in which we can express ourselves. If the Leader of the Opposition had been given the right to speak yesterday on his motion, this debate probably would not have taken place. At the same time we might have been able, as a result of consideration by the Executive Council or the Government, to create an entirely new position whereby confidence could have been infused into the public mind generally in regard to the conduct of the whole affair. If the present Commission continues, even if counsel represents Stuart at that Commission and even though the weight of evidence may be against Stuart and it is determined that he is guilty and the Commission makes no recommendation about a retrial or anything else it may have the power to recommend, I still think a large section of the people of Australia will believe that he has not been given a fair trial or a fair "go."

Mr. Clark—And overseas.

Mr. FRED WALSH—I am not concerned about overseas; I am concerned about Australia. I want us to clear ourselves in the eyes of the people of Australia. If we do that, that will be sufficient for me and, I think, for people overseas as well. I am afraid that, unless something is done along these lines, no matter what the result is, unless it is something that entirely frees Stuart, many people will consider that he has been unjustly dealt with. It is mainly these reasons that made me decide to return here and support the motion. I would be the last to attack the judiciary of this State, or of Australia for that matter, and I am sure we in this Chamber would be the last to attack the police without proper justification, except perhaps in certain individual cases. Once an attempt is made to discredit the judiciary and the police force in the minds of the public and

to destroy that confidence in them that is necessary, then a blow is aimed at the very core of society.

The Hon. B. Pattinson—Now the honourable member is raising the level of the debate again.

Mr. FRED WALSH—I believe that these are all factors that we should be taking into consideration, and that we should not concern ourselves with what may be taken as abstract remarks by certain members when they are carried away perhaps in the heat of the debate. We should take things as we find them and try to remedy the position in which we find ourselves. I do not agree with the honourable member for Onkaparinga when he said that the Leader of the Opposition was led into this position. We have discussed it in Caucus. It was discussed both yesterday and today, although I was not present, and we have discussed it before. The Leader of the Opposition was not led and much less "forced," as the Minister for Education interjected that he was, though I feel he did not mean it. We are a Party and there is no stronger Party man in this House than I. If my Party says a thing, whether or not I agree with it, I will fight for it with the Party. Once it determines something, I give it the benefit of my ability.

Mr. Clark—You would not be here this afternoon otherwise.

Mr. FRED WALSH—We have heard two honourable members who are supposed to represent an independent line of thought in this Parliament. I guarantee there is not sufficient independent line of thought in the districts they represent to return them to Parliament. They are relying mainly on Labor preferences with perhaps a sprinkling of Liberal preferences where the Liberal candidiate may not be acceptable to an electorate who would otherwise vote Liberal. So, when these honourable members attack members on this side of the House, I ask honourable members particularly on the Government side, to note that they attack only when they think there is any danger of a Government defeat. Then they try to show the big strong-arm stuff, when they feel there is every chance of the Government being defeated. But, when there is no chance of that, that is a different matter entirely.

Mr. Clark—They are at least consistent in their inconsistency.

Mr. FRED WALSH—They are a party of the third part. I do not want to belabour this question unduly. Much has already been said. I know this motion will not be carried. It has been moved to give members on this side an opportunity of expressing their views on this matter, not led by any section of the press that at the next State election will be defending the Government and writing leading articles day after day in favour of the Government's policy. We know that will go on just the same. If it were true, as the Premier suggested this afternoon, that that section of the press were guilty of libel, I should be pleased to know that action was to be taken against it. No-one, be they persons or bodies, has the right to libel anyone. I ask the House to weigh the situation carefully and not to be side-tracked. We must protect the Commission against any possible besmirching of its reputation and of the general character of its members.

Mr. RICHES (Stuart)—I support the motion and remind members that it is a motion of censure of the Government rather than of the Supreme Court judges or even the Royal Commission. We recognize that the Government set up the Commission and the Government has caused uneasiness in the minds of many people who are concerned about the issues involved—issues that go beyond the guilt or innocence of Stuart. There is a general anxiety, of course, to see justice done to Stuart. However, during the course of the trials that have been referred to, several other issues arose which created widespread public concern about the general administration of justice, but which, according to statements that have emanated from the Royal Commission, will not be investigated.

I was sorry to hear the member for Mitcham (Mr. Millhouse) throwing the charge at Opposition members that we were trying to capitalize on press publicity. If one is looking for a low ebb in the standard of the debate and in charges thrown across the Chamber, that was the lowest and I strongly resent it. The press may have urged the reconstitution of the Royal Commission, but I have not read it. The member for West Torrens has satisfactorily established our *bona fides* in that regard. This motion of no-confidence was forced on the Opposition by the Government's attitude yesterday. Despite what the member for Burra (Mr. Quirke) has said, no-one can deny that there is widespread disquiet and uncertainty in the public mind that justice may not have been done to Stuart. The Premier mentioned the trials that have taken place, but he did not say—and this point is paramount in my mind—that the court, at the original trial, refused any statement from Stuart to the jury or the judge.

Mr. Dunstan—It refused to have a statement read: Stuart did make a statement.

Mr. RICHES—That point should be inquired into by the Commission. Is it possible in South Australia for an illiterate man to stand defenceless in our courts, unable to make a statement? Stuart was unable to read a statement and was unable to have a statement read for him. I am not criticizing the judge, or those responsible for the conduct of the court, because apparently that is the law of the land, but if so, it should be examined and the Commission should report on it.

Another question that agitates my mind is whether a penniless man, accused of a crime, is at a disadvantage as compared with a man who has wealth at his disposal. Could this evidence that has been accumulated since the original trial have been made available had money been forthcoming to prosecute an inquiry? If Stuart had been a man of means I feel that the evidence would have been available at the original trial. Two points that I want cleared at some time are, firstly, is an illiterate man at a disadvantage in our courts of law, and secondly, is a penniless man at a disadvantage in our courts of law?

I favour the procedure adopted in New South Wales, on which I questioned the Premier earlier this session, where there is a public defender and it is not the responsibility of a young solicitor, at his own expense, to gather evidence when it is not easily forthcoming. Means should be provided whereby a defence can be adequate. Great stress has been placed upon the words used by the member for Norwood (Mr. Dunstan) when he referred to what the judges of the Royal Commission conceived as their duty. Their idea of their duty as a Royal Commission differs from my conception of their duty. My views arise out of conflicting statements made by the Premier to this House. When first questioned about this Royal Commission he promised us that it would investigate right down to the ground every aspect of this case. I thought that that was precisely what the Commission was going to do, but in the statement issued by the Chief Justice, Sir Mellis Napier, on Monday, and printed in yesterday's *Advertiser*, he makes it abundantly clear that the Commission is not to inquire into, for instance, the fact that Stuart's first statement—

The SPEAKER—Order! I think I ruled earlier this afternoon that anything that has been stated by the members of the Royal Commission or any of the witnesses before the Commission, should not be referred to or stated here.

Mr. RICHES—I am referring to a statement that was made for publication—a public statement—as I understand it.

THE SPEAKER—I understand that that statement was made at a sitting of the Commission. I would ask the honourable member not to refer to anything that was stated at the Commission.

Mr. RICHES—I bow to your ruling, but I want to say that from reports received it would appear that the Royal Commission understands its duty is to inquire into fresh evidence only. It has been made clear that in all cases where judges have sat on a re-hearing of cases in the past it has been where it has been limited to a discussion of fresh evidence; but no trial judge has ever sat on an appeal where there has been any reference to the conduct of the case in the first place. This Royal Commission is entirely different from a Full Court. I am of the opinion that this House and the public generally will not be satisfied with a mere examination of fresh evidence. These other issues that have arisen are important to the people and particularly to this Parliament, which is the place where new legislation is introduced. If the law of the land is not adequate to give proper protection and proper trials to accused persons, and if our law needs to be remedied, this is the place where that should be done.

The Government set up the Royal Commission and, contrary to what the member for Mitcham said, the member for Adelaide in particular and other members questioned the constitution of the Commission in the first place and suggested that Judge Kriewaldt of the Northern Territory be one of the commissioners.

Mr. Millhouse—Can you give me a reference in *Hansard* to any such remark by the Leader of the Opposition?

Mr. RICHES—I did not mention the Leader of the Opposition; there are 17 members on this side. The Leader is entitled to his opinions, and I am entitled to mine, and I am speaking for myself.

Mr. Millhouse—Isn't he the spokesman for your Party?

Mr. RICHES—On Party issues.

Mr. Millhouse—This is not one?

Mr. O'Halloran—This is a moral issue.

Mr. RICHES—The motion for censure of the Government is a Party issue. It was the Government which selected the Commission and framed the terms of reference, and the Government itself has been responsible for most of the confusion and uneasiness that has been created in the minds of our people. We have heard conflicting statements from the Law Society and

the Government, from the Premier on the one hand as to the responsibilities of the Commission and the chairman of the Commission on the other hand, and when by the ordinary course of debate and procedure of Parliament we sought to submit something by way of a substantive motion and have it discussed dispassionately, the Government yesterday again refused that right and there was no alternative but for the Opposition to express complete dissatisfaction with the way the Government was handling this case. I support the motion.

Mr. O'HALLORAN (Leader of the Opposition)—Unfortunately, I shall have to be very brief in my reply to points put forward during the debate. Of course, it would not be necessary to be very lengthy, because so few points were made by the members opposing the motion that they could be disposed of rather summarily. However, one or two points were made by the Premier which I think merit some consideration. In the first place the Premier referred to the resolution of the House yesterday. I point out that there was no resolution of the House yesterday on this matter. What the House failed to do was to pass the motion that I had moved which, if it had been carried, would have obviated the debate this afternoon. He then went on to say that had the judges heard new evidence under section 369a they would have considered only that new evidence. That is a fact, and it is also a reply to the member for Onkaparinga in his attack on the member for Norwood. The cases quoted by the member for Onkaparinga were cases where judges who had been involved in an original trial had sat as a court of appeal to consider new evidence and new evidence only. However, if we are to believe the Premier—and he has emphasized this point this afternoon—this Royal Commission is going to investigate all manner of things. He made a further statement, which has been referred to by other Opposition members during the debate, that the whole matter would be sifted right down to the ground. He said that, because we say there is public disquiet about the fact that judges who formerly sat in one or other of the jurisdictions on this matter are now sitting as a Royal Commission to deal with the whole aspect of the case, including the evidence they had already heard and all the other matters which had been considered previously, we are condemning the judges. We are doing no such thing, Sir, and I strongly resent the stupid statements that have been made by some Government supporters that in speaking as we do in the interests of the public we are condemning the judges. We yield to no one in our respect for the law, properly passed by democratically elected Parliaments and administered by judges appointed by responsible executives.

Another point that the Premier glossed over concerned the suggestion made by some members on this side of the House regarding the constitution of the Royal Commission. I remember particularly that the member for Adelaide suggested that judges might be brought from other States, and, in particular, he suggested that Judge Kriewaldt from the Northern Territory should be appointed in view of his experience in dealing with aborigines. The Premier did not tell us whether the Government had made any effort to secure assistance from the other States, and I assume that if he had made such efforts he would have been the first to say so. I am satisfied that no effort was made to set up a panel of Commissioners from outside the South Australian bench. This Parliament is the place where the people's representatives speak, and that is why I moved this motion this afternoon and why members on this side of the House are supporting it. Irrespective of what the member for Burra says, there is grave disquiet throughout the country, and overseas, too. We feel that we are endeavouring to do something to allay that public uneasiness, and therefore with confidence I ask the House to carry the motion.

The House divided on the motion—

Ayes (17).—Messrs. Bywaters, Clark, Corcoran, Dunstan, Hughes, Hutchens, Jennings, Lawn, Loveday, McKee, O'Halloran (teller), Ralston, Riches, Ryan, Tapping, Frank Walsh, and Fred Walsh.

Noes (21).—Messrs. Bockelberg, Brookman, Coumbe, Dunnage, Hall, Hambour, Harding, Heaslip, Hincks, Jenkins, King, Laucke, Millhouse, Nankivell, Pattinson, Pearson, Sir Thomas Playford (teller), Messrs. Quirke, Shannon, Mrs. Steele, and Mr. Stott.

Majority of 4 for the Noes.

Motion thus negatived.

STATE BANK REPORT.

The SPEAKER laid on the table the annual report of the State Bank for the year ended June 30, 1959, together with balance-sheets.

Ordered that report be printed.

ADJOURNMENT.

At 6.08 p.m. the House adjourned until Tuesday, September 15, at 2 p.m.